

INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT
DE-AM36-9XXXXXXXXX

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PART I — THE SCHEDULE
SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 ITEMS BEING ACQUIRED/TOTAL PRICE

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, performance of the following items of work:

Item 1 - Provide Energy Savings Performance Contracting (ESPC) conservation services for federal Government facilities located in the Department of Energy (DOE) *[insert region]* Region of the United States, consisting of the states of *[insert by region]*.

The services shall be provided in accordance with not only the Statement of Work provided in Section C, Description/Specifications/Work Statement, of this contract, but also in accordance with all provisions in other sections of this contract, as well as all of its Attachments, and as revised by agency delivery order requests for proposal (DO RFPs). (See Section H.19 for more specific information.) Definitions of terms applicable to this contract are provided at Attachment 1 to the contract, for assistance in its performance.

(NOTE: There are no Reporting Requirements included in this contract for delivery orders issued against this Indefinite Delivery/Indefinite Quantity (IDIQ) contract award. The ordering agency for a specific delivery order project will include the actual reporting requirements in each specific delivery order issued against this contract. Attachment 2 to this contract provides a Sample Reporting Requirements Checklist for Delivery Orders.)

THE TOTAL MAXIMUM CONTRACT VALUE, defined as the sum of contractor payment streams associated with all delivery orders against all six IDIQ contracts awarded for this DOE Region, shall not exceed \$750,000,000.00.

THE MINIMUM GUARANTEE ORDER(S) VALUE for this specific IDIQ contract award is \$150,000.00.

B.2 REQUIRED SERVICES

The Government requires ESPC conservation services for federal Government facilities located as described in Section B.1, Item 1 above, and seeks to obtain these services using this indefinite delivery indefinite quantity energy savings performance contract (IDIQ ESPC).

The contractor shall provide, at no capital cost to the Government, all labor, material, and equipment necessary to reduce energy and water consumption and provide energy cost savings and related operation and maintenance cost savings at specific sites covered by delivery orders issued against this IDIQ contract. Contracted delivery order services may also include operations and maintenance services during a specific delivery order term as required in Section C or elsewhere of this contract, the specific delivery order, and/or as proposed by the contractor and accepted by the Government in a delivery order award.

B.3 FAR 52.216-22 (MODIFIED) INDEFINITE QUANTITY (OCT 1995)

- (a) This is an indefinite quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.

B.4 FAR 52.216-18 (MODIFIED) ORDERING (OCT 1995)

- (a) Any services to be furnished under this contract shall be ordered by issuance of delivery orders by an authorized Contracting Officer for a United States Government federal agency (Agency Contracting Officer). Agency Contracting Officers shall submit draft delivery order requests for proposals and draft delivery orders, prior to issuance, to the DOE Contracting Officer for this contract to obtain his/her review and suggestions/comments.
- (b) Such orders may be issued beginning on the date of contract award through October 1, 2003. At the Government's discretion, the ordering period may end on this date, which is the current limitation on ESPC ordering authority, as indicated in P.L. 105-388, dated November 13, 1998. However, at any time during the contract term defined in Section F.1.1, the Government may unilaterally modify the contract to extend the ordering period.
- (c) All delivery orders are subject to the terms and conditions of this contract, except as modified by the terms and conditions of a specific delivery order request for proposal, as permitted by the contract. In the event of a conflict between the terms and conditions of a delivery order and those of this contract, the delivery order provisions will take precedence. (Also see Section C.1.)
- (d) If mailed, a delivery order is considered "issued" when the Government deposits the order in the mail. All delivery orders shall be in writing, and duly signed by an authorized Agency Contracting Officer, as defined in subparagraph (a) above.

B.5 FAR 52.216-19 (MODIFIED) ORDER LIMITATIONS (OCT 1995)

- (a) The Government estimates it will procure, and thereby establishes as a maximum order amount for the total of ALL six contracts awarded in the DOE *[INSERT]* region identified, a not-to-exceed \$750,000,000 of ESPC services during the terms of the contracts awarded (see Section B.1). Also, the Government guarantees that a minimum of \$150,000 of ESPC services shall be awarded to the contractor during that same 25-year term. (See the limitation on ordering at Section B.4(b).). Therefore, the Government is not obligated to purchase from the contractor services that exceed a total value of \$150,000. (This value of services may be represented by anything from a single delivery order for one project, to a number of delivery orders for various projects.) The Contractor is likewise never obligated to provide offers for specific proposed delivery order projects, accept orders, or furnish services against this contract.
- (b) Notwithstanding paragraph (a) of this section, the Contractor shall honor any order received, including orders exceeding the maximum order limitation identified in paragraph (a), unless that order (or orders) is returned to the Agency Contracting Officer within thirty (30) days after issuance, with written notice stating the Contractor's intent not to provide the services called for, and the reasons therefor. Upon receiving this notice, the Government may acquire the supplies or services from another of the multiple-awardee Contractors for this DOE region.

B.6 NEGOTIATED CONTRACT B SCHEDULES

The contract includes these negotiated schedules, the information in which shall be binding on the Contractor throughout the period of performance (overall term) of the contract. These schedules apply to all delivery orders issued against the contract. Following are the titles of each of these contract B schedules. They are made a part of this contract, in Part III, Section J, Attachment 3.

SCHEDULE B-1 IDIQ Contract Maximum Markups

This Schedule provides the negotiated maximum markup percentages applicable to the both the direct costs of ECMs by technology category identified in Section C.2 and included in the Schedule DO-2 for a project proposal, and to the performance period expenses identified on the Schedule DO-3 for the proposal. These markups shall include all proposed indirect cost elements and profit. The indirect elements of expense in the markups include such things as overhead, general and administrative expense, general program marketing and management, etc. Any project expenses that are not directly the result of the development and implementation of an individual project are included in the markups, and they shall not include any direct expenses. The Contractor shall identify the elements of indirect expense included in the proposed markup for a specific delivery order project.

SCHEDULE B-2 IDIQ Contract Maximum Added Premiums

This Schedule provides the negotiated maximum added premiums, as the number of basis points (basis point = 1/100 percentage points), that may be applied to the accepted applicable financial index used for a specific delivery order project to finance the project's investment amount. (The negotiated added premium plus the accepted applicable financial index equals the project's interest rate.) Per the schedule, the maximum added premiums are based on both the project term and total investment amount financed for the project. The Contractor shall provide evidence to the Agency Contracting Officer of the reasonableness of the added premium proposed for a specific delivery order project within the maximums allowed.

SECTION C — DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 GENERAL REQUIREMENTS/PROJECT SCOPE

This contract is to acquire under an energy savings performance, indefinite delivery/indefinite quantity contract energy conservation services for the DOE region identified in Section B.1, to reduce energy, water consumption and associated utility costs, and energy-related operations and maintenance costs as specified in each delivery order issued against this contract. The Contractor shall be responsible for providing all labor, material, and capital to install energy and water conservation projects and provide operations and maintenance as specified in each delivery order. The cost of an ECM project must be covered by the reduced energy and related operation and maintenance cost savings incurred at the Federally-owned facility. The energy cost savings must be verified annually.

The scope of the IDIQ contract includes all Federally-owned facilities located in the region defined in Section B.1 above. The IDIQ contract may be used by authorized Federal agencies to acquire energy conservation measures in accordance with the ordering procedures found at Sections H.20 through H.26 of this contract.

All provisions that follow throughout the remaining sections of this contract may be revised within the overall scope of the contract as necessary (based on the needs of an agency) in an Agency Delivery Order Request for Proposal (DO RFP), unless noted otherwise in this contract at the specific provision. In the event of a conflict between the DO RFP and the IDIQ, the provisions of the DO RFP will prevail. (See more specific information at Section H.19.)

C.2 ENERGY CONSERVATION MEASURES (ECMs)

C.2.1 Types of Energy Conservation Measures

This contract and its delivery orders require the contractor to possess the capability to implement ECMs that may include the following energy efficiency or renewable energy technology categories:

1. Boiler Plant Improvements, such as, but not limited to
 - boiler control improvements
 - upgrade of natural gas-fired boilers with new controls
2. Chiller Plant Improvements, such as, but not limited to
 - chiller retrofits or replacements
3. Building Automation Systems (BAS) / Energy Management Control Systems (EMCS), such as, but not limited to
 - HVAC upgrade from pneumatics to Direct Digital Control (DDC)
 - Upgrade or replacement of existing EMCS systems
4. Heating, Ventilating, and Air Conditioning (not including boilers, chillers, and BAS/EMCS) such as, but not limited to
 - packaged air conditioning unit replacements
 - HVAC damper and controller repair or replacement
 - replacement of air conditioning and heating units with heat pumps
 - window air conditioning replacement with high efficiency units
 - cooling tower retrofits or replacements

- economizer installation
 - fans and pump replacement or impeller trimming
 - thermal energy storage
 - variable air volume (VAV) retrofit
5. Lighting Improvements, such as, but not limited to
 - interior and exterior lighting replacements
 - lighting control improvements
 - occupancy sensors installation
 - LED exit sign installation
 - daylighting
 6. Building Envelope Modifications, such as, but not limited to
 - insulation installation
 - weatherization
 - window replacement
 - reflective solar window tinting
 7. Chilled Water, Hot Water and Steam Distribution Systems, such as, but not limited to
 - piping insulation installation
 - hot water heaters repair and replacement
 - steam trap repair and replacement
 8. Electric Motors and Drives, such as, but not limited to
 - motor replacement with high efficiency motors
 - variable speed motors or drives
 9. Refrigeration, such as, but not limited to
 - replacement of ice/refrigeration equipment with high efficiency units
 10. Distributed Generation such as, but not limited to
 - cogeneration systems installation
 - microturbines installation
 - fuel cells installation
 11. Renewable Energy Systems, such as, but not limited to
 - photovoltaic system installation
 - solar hot water system installation
 - wind energy system installation
 - passive solar heating installation
 - alternatively fueled vehicle refueling station installation
 12. Energy/Utility Distribution Systems, such as, but not limited to
 - transformers installation
 - power quality upgrades
 - power factor correction
 - gas distribution systems installation
 13. Water and Sewer Conservation Systems, such as, but not limited to
 - installation of low flow showerheads
 - installation of low-flow plumbing equipment

- installation of water efficient irrigation
 - installation of on-site sewer treatment systems
14. Electrical Peak Shaving/Load Shifting, such as, but not limited to
 - thermal energy storage
 - gas cooling
 15. Energy Cost Reduction Through Rate Adjustments, such as, but not limited to
 - recommendations for change to more favorable rate schedule
 - recommendations for Government negotiation of lower rates, same supplier
 - recommendations for lower energy cost supplier(s) (where applicable)
 - energy service billing and meter auditing recommendations
 16. Energy Related Process Improvements, such as, but not limited to
 - production and/or manufacturing improvements
 - recycling and other waste stream reductions
 17. Proposal Development Energy Surveys, such as, but not limited to
 - detailed energy surveys
 - feasibility studies

C.2.2 Restrictions on proposed ECMs

ECMs installed by the Contractor shall not:

1. Jeopardize the operation or environmental conditions of dedicated computers or computer rooms;
2. Increase water consumption; e.g., once through fresh water cooling systems (Note: evaporative cooling technologies may be considered where environmentally appropriate);
3. Result in an adverse effect upon the quality of the human environment or violate any Federal, State, or local environmental protection regulations;
4. Degrade performance or reliability of existing Government equipment;
5. Reduce extra capacity that was intentionally included for future growth, mobilization needs, safety, or emergency back-up;
6. Violate current versions of national codes (e.g., National Electric Code, Uniform Building Code, etc. , State or local building codes; See Section C.5.2); or
7. Creates unsafe conditions or otherwise adversely impacts government facilities, operations, and/or personnel;

Any additional restrictions on ECMs will be specified in delivery orders issued against the contract.

C.2.3 Contract Requirements for ECMs

Installed ECMs shall comply with the contract requirements, and/or with the requirements of each delivery order. Contract requirements also incorporate all Government-approved Contractor submittals, including: equipment design and installation specifications, compliance with codes and standards, design drawings, installation schedules, startup and testing procedures, operation and maintenance procedures, and any other submittals required by delivery orders issued against the contract.

C.3 FACILITY PERFORMANCE REQUIREMENTS OF ECMs

Installed ECMs shall meet the performance requirements specified below:

C.3.1 Environmental & Lighting Conditions: Modifications to building lighting systems and environmental control systems shall not be permitted to exceed the ranges for Standards of Service specified in Paragraph C.3.2. Where automated controls of lighting or environmental conditions are to be installed, the occupants must have the ability to override the system.

C.3.2 Standards of Service: Installed ECM's shall comply with the Standards of Service required for facilities as specified in each delivery order. The standards of service will include acceptable temperature and humidity ranges, air quality parameters, lighting levels, and other related factors.

C.3.2.1 HVAC Systems

(a) Occupied Areas:

1. Comfort Range:
 65° - 78°F dry bulb
 30% - 60% relative humidity
2. In general occupied areas (except computer rooms) the following setbacks may be performed: During unoccupied periods during the heating season, the temperature may be reduced to 55°F dry bulb. During unoccupied periods during the cooling season, the HVAC system may be turned off. However, the system must be designed so that it will restart if the temperatures approach levels that could damage equipment. In any case, temperatures must be restored to the 65° - 78°F dry-bulb range by the start of the next occupied period.
3. Outside air cannot be reduced below the quantities cubic feet per minute (CFM) per person value found in ASHRAE 62-89 (or most current version), "Ventilation for Acceptable Indoor Air Quality".

(b) Computer Rooms

1. Operating Range:
 70° - 74°F dry bulb (or based on Mfr. specs)
 45% - 55% relative humidity

2. No environmental control system temperature setbacks will be allowed in computer rooms.

- (c) The HVAC control system must be compatible with the present energy management control system. Thermostatic tolerance must be within plus or minus one degree Fahrenheit for all areas listed in C.3.2.1(b) and plus or minus two degrees Fahrenheit for areas in C.3.2.1(a). Any system temperature change required for the operating rooms must not exceed 1 degree F in five (5) minutes.
- (d) Hospitals and other special areas may have special requirements as specified in the delivery order.

C.3.2.2 Lighting Systems: Except where special circumstances exist, illumination levels shall be maintained as near as practical to the Illuminating Engineering Society of North America (IES) recommended illumination level.

C.4 MEASUREMENT AND VERIFICATION OF ECM PERFORMANCE

Every delivery order awarded shall include a site-specific Measurement & Verification (M&V) Plan that specifies the M&V requirements and procedures that shall apply to the delivery order based on various factors such as type of ECMs, projected value of energy savings, certainty/uncertainty of savings being achieved, and the intended risk allocation between the Federal agency and the Contractor.

The delivery order M&V plan shall specify the M&V options(s) and method(s) that will be used for each ECM included in the delivery order. M&V options and methods proposed for each ECM shall comply with the latest version of the DOE/FEMP M&V Guideline for Federal Energy Projects in effect at the time of delivery order award.

C.4.1 M&V Activities

The Contractor shall perform the following required M&V activities:

1. Define a site-specific M&V plan for the particular project being installed once the project has been fully defined and the detailed energy survey is completed; this will occur before the delivery order is awarded and the plan will be incorporated into the delivery order.
2. Define pre-installation baseline including (a) equipment/systems, (b) baseline energy use, (c) system performance factors (e.g., lighting levels, temperature setpoints, time clock settings, etc.), and/or (d) actions to determine baseline energy use, which may include site surveys, short term or long term metering, analysis of billing data, and/or engineering calculations. The definition of pre-installation baseline should occur before the delivery order is awarded.
3. Define post installation conditions including (a) equipment/systems, (b) post installation energy use and/or (c) actions to determine post installation energy use which may include site surveys, short-term or long-term metering, analysis of billing data, and/or engineering calculations, and (d) factors beyond the contractor control that influence post-installation energy (e.g. building occupancy, plug load creep, etc.).
4. Conduct annual M&V activities to verify operation of the installed equipment/systems and/or calculation of current year's energy savings.

C.4.2 M&V Submittals During Delivery Order Development and Post Award

1. The Contractor shall prepare and submit a general M&V approach (“M&V Overview”) with its Initial Proposal, identifying the M&V options and methods to determine pre-installation baseline and post-installation ECM performance for each proposed ECM (see Section H.21(c)).
2. The Contractor shall prepare and submit an M&V Overview and Specific M&V Plan with its final proposal per requirements of Section H.24.1 B. Included in the specific M&V plan will be a project schedule indicating ECM installation, M&V activities, and post-award M&V reporting milestones. M&V report milestones should include post-installation M&V reports associated with ECM installation inspection and commissioning, and periodic (at least annually) ECM performance M&V reports.
3. The Contractor shall prepare and submit a Post-Installation M&V report, to verify that installed ECMs demonstrate the potential to deliver the guaranteed annual energy and energy-related cost savings specified in the awarded delivery order. The contents of the Post-Installation Report will be as specified in the Specific M&V Plan approved by the Government and included in the delivery order. The Post-Installation M&V report shall be submitted in accordance with the schedule provided in the Specific M&V plan.
4. The Contractor shall prepare and submit an Annual M&V Report (or other period agreed to in the specific M&V Plan) including data and calculations that provide evidence that continued ECM performance achieves the guaranteed annual energy and energy-related cost savings in the delivery order. The contents of the periodic M&V report should include ECM performance measurements, calculations and adjustments to baselines as applicable and agreed to in the specific M&V Plan. Annual (periodic) M&V reports shall be submitted in accordance with the schedule provided in the specific M&V Plan.

C.5 INSTALLATION REQUIREMENTS FOR ECMs

NOTE: Once negotiated and awarded, a delivery order is a fixed-price design/build energy project. Changes to meet design or performance requirements of the delivery order shall be at no cost to the Government. Changes in contractor cost due to Government changes to delivery order requirements will be negotiated as changes.

C.5.1 Design and Construction Package

1. The Contractor shall prepare and submit a design and construction package to the Federal agency for review and approval prior to starting ECM installation in accordance with the delivery order reporting requirements checklist. The design and construction package shall be certified by a registered engineer to assure compliance with applicable building codes and Federal agency design standards. The delivery order will specify site specific requirements of the design and construction package. The Contractor is responsible for the technical adequacy of its work. Acceptance of the design and construction package by the Government shall not relieve the Contractor from responsibility for adequacy of its design and installation work.

2. The design and construction package due date will be specified in the delivery order reporting requirements checklist. Upon approval of the design and construction package, bonds may be required in accordance with Section H.17.
3. The design and construction package shall be prepared and include at least the following:
 - a. Manufacturer's Data For all ECM equipment to be installed the Contractor shall provide the manufacturer's descriptive literature of equipment including drawings, diagrams, performance and characteristic curves, and catalog cuts.
 - b. Design Specifications The Contractor shall identify and reference design specifications applicable to installed ECMs.
 - c. Construction Drawings Construction drawings shall be prepared by the Contractor, subcontractor, or any lower-tier subcontractor showing in detail:
 - The installation (i.e., form, fit, and attachment details) of the interface between ECM equipment and existing Government equipment.
 - The location of installed equipment on building floor plans.
 - Certification of ECM Compliance with Building Codes and Standards. The Contractor shall provide registered engineer certification that ECMs comply with all applicable building codes and standards. ECM installation plans submitted to the Agency Contracting Officer without evidence of the professional engineer (PE) certification shall be returned for resubmission.
 - d. Planned Service Interruptions If any utility services must be discontinued temporarily to perform work, such interruptions shall be described and indicated on the project installation schedule. The description shall include the length of the interruption, its time (date, day of week, time of day, etc.), and a justification.
 - e. Site Plan and Compliance with Federal Site Exterior Architectural Plan If an ECM involves the installation of facilities or exterior structures, the Contractor shall provide a site plan showing its location, or show its location on the Government's existing site plan. The Contractor shall also provide a plan and elevation drawings of the facility or exterior structure showing its size and exterior appearance.
 - f. Acquisition of Permits For any ECM installation requiring permits from regulatory agencies (i.e., hot-work permit for welding), the Contractor shall provide its plan and schedule for acquiring such permits.
 - g. Installation Schedules The installation schedule shall show the order in which the Contractor proposes to perform the work and the dates on which the Contractor contemplates starting and completing all major milestones (including acquiring materials, equipment, permits). The schedule shall be in the form of a progress chart of suitable scale to indicate the amount of work scheduled for completion by any given date during the installation period.

4. Design documents will require both a preliminary and final review by the Agency. Each delivery order will specify the submittal requirements associated with each review.

C.5.2 Design and Construction Standards

1. A Delivery Order issued against this IDIQ contract award will specify design and construction standards applicable to site or agency specific facility requirements. At a minimum, all ECMs, work, equipment and materials required for ECM installation shall comply with the most recent issue of the design and construction standards indicated in the delivery order as applicable. The following list of standards is provided as a guideline for establishing these requirements.
 - American National Standards Institute (ANSI)
 - Code of Federal Regulations (CFR)
 - 29 CFR 1910 Occupational Safety and Health Standards
 - 10 CFR 435 Energy Conservation Voluntary Performance Standards for Commercial and Multi-Family High Rise Residential Buildings
 - 29 CFR 1926 Safety and Health Regulations for Construction
 - National Electric Code (NEC)
 - National Electrical Safety Code (NESC)
 - National Fire Protection Association (NFPA) Standards including, but not limited to NFPA 101 - Life Safety Code
 - National Electrical Manufacturers Association (NEMA).
 - Underwriters Laboratory (UL).
 - Uniform Building Code (UBC)
 - Uniform Plumbing Code (UPC)
 - American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE)
 - ASHRAE 90.1
 - Army Corps of Engineers Safety Manual
 - National Electrical Manufacturers Association (NEMA)
 - National Historic Preservation Act, as applicable
 - Illuminating Engineering Society of North America (IES)
 - American Institute of Architects (AIA) Masterspec
 - Air Conditioning and Refrigeration Institute (ARI)
 - Occupational Safety and Health Administration regulations
 - Other design standards required by the ordering Federal Agency
2. No requirement of this contract shall supersede applicable regulations, local codes and/or standards. Any violation of such regulations and standards shall be brought to the attention of the Agency Contracting Officer for clarification prior to proceeding with the work.
3. If conflicts between designated applicable codes and/or standards exist, the Agency Contracting Officer's Representative and applicable authority having jurisdiction shall determine the appropriate code to follow.

C.5.3 ECM Quality Control Inspection Program

1. The Contractor shall be responsible for quality control during installation of ECMs. The Contractor shall inspect and test all work performed during ECM installation to ensure compliance with the delivery order's performance requirements. The Contractor shall

maintain records of inspections and tests, including inspections and tests conducted by or for utility or other regulatory agencies. The Contractor shall prepare a Quality Control Inspection Program for review and acceptance by the Government. The ECM Quality Control Inspection Program shall be prepared and submitted in accordance with the delivery order reporting requirements checklist.

2. The ECM Installation Quality Control Inspection Program shall detail the procedures, instructions, and reports that ensure compliance with the delivery order and this IDIQ contract. This plan shall include as a minimum:
 - a. The quality control organization, in chart form, showing the relationship of the quality control organization to the Contractor's organization.
 - b. Names and qualifications of personnel in the quality control organization.
 - c. Area of responsibility and authority of each individual in the quality control organization.
 - d. A listing of outside organizations, such as testing laboratories, architects, and consulting engineers that will be employed by the Contractor, and a description of the services these firms will provide.
 - e. Procedures for reviewing all shop drawings, samples, certificates, or other submittals for delivery order and indefinite quantity contract compliance, including the name of the person(s) authorized to sign the submittals for the Contractor, as complying with the delivery order and indefinite quantity contract's requirements.
 - f. An inspection schedule, keyed to the installation schedule, indicating necessary inspections and tests, the names of persons responsible for the inspections and tests, and the time schedule for each inspection and test.
 - g. The procedures for documenting quality control operations, inspection, and testing, with a copy of all forms and reports to be used for this purpose. The Contractor shall include a status log listing all submittals required by the inspection plan and stating the action required by the Contractor or the Government. The Contractor shall also prepare and maintain a testing plan that shall contain a listing of all tests required by the delivery order and/or IDIQ contract requirements.
 - h. The Quality Control Inspection Program Plan shall be submitted to the COR for review and approval as a separate stand-alone document after award of the delivery order, along with the required Design and Construction Package. The initial Government review will be completed within fifteen (15) working days of its receipt. The Contractor shall then submit any revisions within fifteen (15) working days after receipt of the Government's notice or request for clarification. After receipt of the requested revised contractor information, the Government's review and approval shall be completed within fifteen (15) working days.

C.5.4 Installed ECM Commissioning

The Contractor shall include a commissioning plan detailing performance of design review, start-up, testing, and interactive performance assurance standards for all Contractor-installed and Government-owned equipment impacted by the ECMS installed. The commissioning approach shall draw upon procedures established for commissioning Federal Buildings as outlined in the Building Commissioning Guide 2.1 available at ["www.eren.doe.gov/femp/techassist/bldgcomgd.html"](http://www.eren.doe.gov/femp/techassist/bldgcomgd.html). The Contractor shall submit a Commissioning Plan as a stand-alone document in accordance with the delivery order reporting requirements checklist. Commissioning shall be completed and documented as part of the Post-Installation M&V Report.

C.5.5 Environmental Protection

ECMs shall cause no adverse impacts upon the quality of the human environment. Impacts on air quality (pollutants, noise level, and odors or fumes) and potable water use are examples of potential areas of concern at the project site. Any planned building modifications shall comply with the National Environmental Policy Act (NEPA) and other applicable Federal, state, and local environmental protection regulations. The delivery order will identify specific known hazardous waste handling and storage requirements (e.g., PCB ballasts removed from lighting fixture retrofits).

The contractor shall comply with applicable Federal, state and local laws and with the applicable regulations and standards regarding environmental protection. All environmental protection matters shall be coordinated with the Agency Contracting Officer. Authorized Government officials may inspect any of the contractor's work areas on a no-notice basis during normal working hours. In the event that a regulatory agency assesses a monetary fine against the Government for violations caused by contractor negligence, the contractor shall reimburse the Government for the amount of any fine and other related costs. The contractor shall also clean up any oil spills, hazardous wastes, and hazardous materials resulting from the contractor's operations. The contractor shall comply with the instructions of the cognizant Federal agencies' safety and health personnel to avoid conditions that create a nuisance or which may be hazardous to the health of Government or civilian personnel.

The contractor shall prepare at its expense all documentation necessary to acquire permits to comply with all applicable Federal, state and local requirements prior to implementing affected ECMs in the performance of a delivery order. The contractor shall not receive a notice to proceed with installation until all environmental protection requirements contained in the IDIQ contract and a delivery order have been satisfied.

The contractor shall comply with 40 Code of Federal Regulations (CFR) Section 311, and with the requirements of the latest edition of the applicable Federal agency's Spill Prevention Control and Countermeasures Plan, as required by a delivery order.

C.5.6 Service Interruptions

1. For any planned utility service interruptions, the Contractor shall furnish a request to the Agency Contracting Officer's designated representative for approval at least fifteen (15) working days in advance or as specified in the delivery order. The request shall identify the affected buildings and duration of planned outage.
2. The Government will coordinate with affected tenants and customers as applicable.

3. If the discontinued service is due to any emergency breakdown, the Contractor shall notify the Agency Contracting Officer's designated representative as soon as possible and the Government will notify those affected tenants and customers as applicable.
4. Federal agencies may have additional requirements that apply to specific delivery orders, and if applicable, will be specified in the delivery order. These additional requirements may include liquidated damages for violations of service interruption provisions.

C.5.7 As-Built Drawings

After completion of installation and Government acceptance of installed ECMs, the Contractor shall submit as-built drawings to the Agency Contracting Officer or his/her designated representative in accordance with agency standards or specifications identified in the delivery order.

C.6 OPERATION OF ECMs

C.6.1 Operations work includes all work and costs (excluding energy costs) associated with operating energy producing and consuming systems. The operations work effort shall include operations tasks at specific stations, continuous or periodic equipment monitoring, and minor on-line equipment adjustments required to achieve all facility and energy conservation performance requirements of this contract.

C.6.2 The Contractor shall be responsible for operation of all ECMs installed. Installed ECMs shall include all contractor installed equipment and those portions of Government equipment which have been modified or replaced to achieve proposed ECM performance. Examples of exceptions that may be specified in a delivery order are:

1. If the new operations work requirement for Contractor installed ECMs is similar to an existing operations work requirement for Government owned equipment and does not have an impact on Government resources, the Contractor may request that the Government perform operations work on Contractor installed equipment. The Government reserves the right not to accept operations work on installed ECMs.
2. The Contractor finds it advantageous and proposes to assume responsibility for an operation of existing Government-owned equipment to ensure that the ECM will be implemented properly and achieve proposed ECM performance. Any operations work provided by the Contractor on existing Government-owned equipment shall be at the Contractor's expense.
3. The Government currently utilizes bargaining unit employees, contracted services, or in-house labor and considers it advantageous to perform operations of the installed ECMs.

C.6.3 When the implementation of an ECM results in a change in an existing operations work affecting Government or contractor equipment, the Contractor shall prepare a new written operations work procedure for approval by the Government. The due date for the operations work procedure will be specified in the delivery order reporting requirements checklist. The Contractor shall train Government personnel in the new approved

operations work procedure. The Government will permit its personnel to attend training sessions at reasonable times on the specific project site's premises.

- C.6.4** If the Government assumes proposed operations in C.6.2.1 or C.6.2.3 above, the Government will use and operate government-owned equipment, and contractor equipment, in accordance with operating procedures provided by the Contractor and approved by the Agency Contracting Officer. The Contractor shall monitor and continue to be responsible for equipment performance. Under the O & M section of the Contractor's Management Plan, the Contractor shall provide a description of how he plans to coordinate with, monitor, and verify implementation of the Contractor provided operating procedures by Government or contracted operations personnel.
- C.6.5** The Government will not move, turn off, or otherwise change any Contractor-owned equipment without the consent of the Contractor, unless such action is in accordance with the operation procedures provided by the Contractor; or if it is necessary in an emergency to prevent loss of life, injury or damage to property, or severe discomfort to Government personnel, occupants, or patients.

C.7 MAINTENANCE OF ECMs

- C.7.1** Maintenance work includes all work and costs associated with maintaining the energy producing and consuming systems. Maintenance work includes periodic equipment inspections, tests, calibrations, preventative maintenance tasks, and corrective maintenance actions required to ensure systems operate as intended.
- C.7.2** The Contractor shall be responsible for maintenance of all ECMs installed. Installed ECMs shall include all contractor installed equipment and those portions of Government equipment that have been modified or replaced to achieve proposed ECM performance. Examples of exceptions that may be specified in a delivery order are:
1. If the maintenance work is similar to an existing maintenance work requirement for Government-owned equipment and does not impact on Government resources, the Contractor may request the Government in its proposal to perform maintenance work on Contractor-owned equipment. The Government reserves the right to not accept the proposed responsibility for maintenance work on installed ECMs.
 2. The Contractor proposes to assume responsibility for maintenance on Government-owned equipment in order to achieve proposed ECM performance. The Contractor may propose to provide either total maintenance or a level of maintenance needed to augment the existing maintenance provided by the Government. Any maintenance work provided by the Contractor on government-owned systems or equipment shall be at the Contractor's expense.
 3. The Government currently utilizes bargaining unit employees, contracted services, or in-house labor and considers it advantageous to retain maintenance responsibility of installed ECMs.
- C.7.3** When the implementation of an ECM changes existing equipment maintenance schedules, the Contractor shall prepare a new written maintenance work procedure for

approval by the Government. The due date for the maintenance work procedure will be specified in the delivery order reporting requirements checklist. The Contractor shall train Government personnel in the new approved maintenance work procedure. The Government will permit its personnel to attend training sessions at mutually agreed to times on the specific project site's premises.

- C.7.4** If the Government assumes the proposed maintenance work in C.7.2.1 and/or C.7.2.3 above, the Government will maintain government-owned equipment, and contractor equipment in accordance with maintenance procedures provided by the Contractor and approved by the Agency Contracting Officer. Under the O & M section of the Contractor's Management Plan, the Contractor shall provide a description of how he plans to coordinate with, monitor, and verify implementation of the Contractor provided maintenance procedures by Government or contracted maintenance personnel.
- C.7.5** The Government will not move, turn off, or otherwise change any contractor-owned equipment without the consent of the Contractor, unless such action is in accordance with the maintenance procedures provided by the Contractor, or if it is necessary in an emergency to prevent loss of life, injury or damage to property, or severe discomfort to Government personnel, visitors, occupants, or patients.

C.8 REPAIR OF ECMs

- C.8.1** Repair of ECMs includes all material and equipment associated with the replacement or rebuilding of facilities, systems and equipment that have failed, or are determined by the Government to be in a condition of imminent failure and/or diminished ECM performance. Repair and replacement requirements are as follows:
1. Contractor Installed & Contractor-Owned Items When contractor installed facilities, systems, and equipment fail, the Contractor shall be responsible for repairs (regardless of ownership). If equipment failure is a result of Government negligence or damage, the Government will provide repair or replacement within a reasonable time period, at its expense, or if repaired or replaced at Contractor expense, will reimburse the Contractor or adjust future invoice(s) as negotiated and agreed upon by the Government and the Contractor.
 2. Contractor-Installed & Government-Owned Items. The contractor shall be responsible for the repair and replacement of any equipment that it both installs and derives annual payment from (regardless of ownership) during the term of the delivery order. This applies to contractor-purchased equipment whose title has been transferred to the Government, with a contractor security interest, and Government-furnished equipment that has been installed by the Contractor. If equipment failure is a result of Government negligence or damage, the Government will provide repair or replacement within a reasonable time period, at its expense, or if repaired or replaced at Contractor expense, will reimburse the Contractor, or adjust future invoice(s) as negotiated and agreed upon by the Government and the Contractor.
 3. Existing Government-Owned Items. When existing Government-owned facilities, systems, and equipment fail, the Government will be responsible for repairs within a reasonable time period. The Contractor shall provide repairs, at

no expense to the Government, if the Government-owned facilities, systems, and equipment failure is a result of actions on the part of the Contractor. The Contractor shall make repairs within a period of time as specified in the delivery order. If the Contractor elects to assume repair responsibilities for Government-owned systems or equipment as part of an ECM proposal, the delivery order shall include a listing of the types of repairs that will be the Contractor's responsibility.

C.9 CONTRACTOR MAINTENANCE AND REPAIR RESPONSE TIME

- C.9.1** The Contractor shall establish a point of contact (name and phone number) for use by the Government in providing response to contractor equipment failures. The point of contact shall be available as specified in the delivery order throughout the delivery order's term. Initial telephone response to repair call messages shall be within the time frame specified in the delivery order. If a site visit is needed to repair equipment, repair personnel shall arrive on site within the time frame specified in the delivery order of the initial telephone response for non-emergency repairs or within the time frame specified within the delivery order for emergency repairs. Although normal contractor access is during the normal work hours specified for the specific site in the delivery order, the Contractor may be granted 24-hour per day access to the buildings for emergency work.
- C.9.2** Emergency maintenance and repair work is defined as maintenance or repair necessary to correct an imminent failure of Section C.3 Standards of Service or any action necessary to protect the safety or health of the facility occupants and prevent adverse impacts on property.
- C.9.3** In the event the Contractor fails to respond as required in the delivery order and in the event of emergencies, the Government may incur expenses to perform emergency repairs to contractor-installed equipment as well as Government equipment for which the Contractor assumed maintenance and repair responsibilities, and deduct such incurred expenses from future contractor invoices. The Contractor shall hold the Government harmless in such cases where the Contractor fails to respond in emergencies. In addition, the Contractor shall reimburse the Government for any costs incurred, as negotiated and agreed upon by the parties for specific projects.

C.10 OPERATIONS AND MAINTENANCE MANUALS AND TRAINING FOR ECMs

C.10.1 Operations and Maintenance Manuals

The Contractor shall furnish operation and maintenance (O&M) manuals and recommended spare parts lists for O&M of the contractor-installed ECMs and modified Government equipment. O&M plans and spare parts lists shall be submitted prior to Government acceptance of the project, as specified in the delivery order.

C.10.2 Government Personnel Training for ECMs

1. Thirty (30) days prior to the installation completion, the Contractor shall train Government personnel and/or Government Operations and Maintenance (O&M) contractors as required to operate, maintain, and repair ECM equipment and systems in the event of emergencies.
 - a. Training Program - General Requirements: The Contractor shall provide a training program for Government personnel and/or Government O&M contractors for each ECM in a project. The program shall provide instruction on operation, troubleshooting, maintenance, and repair of ECMs. Training shall include both a classroom phase and a practical application phase. The course material shall include the operation and maintenance plans and manuals. The program shall be conducted at the delivery order's specified site(s) in facilities provided by the Government.
2. The Contractor shall train Government personnel and/or Government O&M contractors to operate, maintain, and repair ECM equipment ninety (90) days prior to the end of the delivery order's term.

C.11 GOVERNMENT PROJECTS

There shall be no restriction on Government projects of any kind including those that may provide energy conservation equipment, the removal of existing energy consuming equipment, or the addition of new energy consuming equipment for mission needs. The Government shall notify the Contractor when Government projects are to be implemented which may impact the installation or operations of contractor-installed ECMs. If the Government project affects determination of annual energy savings, then a baseline adjustment will be negotiated and incorporated into the delivery order by modification.

C.12 UTILITY ENERGY EFFICIENCY/RENEWABLE PROJECT FINANCIAL INCENTIVES

The implementation of an ECM may result in the Government being eligible for a financial incentive from the serving utility company or other entity charged with the administration of incentives by the state or territory. The Contractor shall be responsible for determining the availability of any applicable financial incentives, where the value of the incentives exceeds the incremental costs to obtain them. Further, the Contractor shall be responsible for coordinating with the Agency Contracting Officer or his/her designee as to the preparation of any and all documentation required to apply for any such applicable financial incentives. When preparing any application for Government submission to the entity administering the incentives, the Contractor shall also submit a proposal to the Agency Contracting Officer or his/her designee, as specified in the delivery order, to address disposition of revenues acquired from the incentives administrator, which shall be negotiated with the Government.

C.13 AVAILABILITY OF UTILITIES

The Government will furnish water and electric current at existing outlets as may be required for the installation work to be performed under a delivery order at no cost to the Contractor. The Contractor at its expense and in a workmanlike manner satisfactory to the Agency Contracting Officer shall install and maintain all necessary temporary connections and distribution lines for each utility. Information concerning the location of existing outlets may be obtained from the Contracting Officer or the

Contracting Officer's designated representative. The Contractor shall remove all the temporary connections, distribution lines, and associated equipment upon completion of the installation work.

C.14 GOVERNMENT FURNISHED PROPERTY AND CONTRACTOR FURNISHED MATERIAL

The Contractor shall provide all materials and supplies necessary to perform the work as specified in the delivery order. Materials and supplies provided shall be of acceptable industrial grade and quality and in compliance with any applicable standards (see Section C.5.2). All such materials and supplies must be compatible, and operate safely within design parameters of existing systems equipment.

As an ESPC contract presumes that all property will be furnished by the Contractor, a provision in a delivery order issued against this contract for specified Government Furnished Property for performance of this contract is not expected to normally occur. However, should Government Furnished Property be required or considered appropriate for a delivery order award, it would be designated and identified at this numbered provision in the delivery order request for proposal for the delivery order project.

C.15 CONTRACTOR EMPLOYEES

- (a) Upon receipt of notice of award of a delivery order project under this contract, the Contractor shall provide the Agency Contracting Officer for the delivery order, or the Agency COR, with the name(s) of the responsible supervisory person(s) authorized to act for the Contractor.
- (b) The Contractor shall furnish sufficient personnel to perform all work specified within the delivery order.
- (c) Contractor employees shall conduct themselves in a proper, efficient, courteous, and businesslike manner.
- (d) The Contractor shall remove from the site any individual whose continued employment is deemed by the Agency Contracting Officer or the Agency COR, acting reasonably, to be contrary to the public interest or inconsistent with the best interests of Government business or national security.
- (e) No employee or representative of the Contractor will be admitted to the work site unless that employee furnishes satisfactory proof that he/she is a citizen of the United States or otherwise legally authorized to work in the United States.

C.16 FIRE PREVENTION

The Contractor shall ensure that its employees shall know how to activate a fire alarm. The Contractor shall observe all requirements for handling and storing combustible supplies, materials, waste and trash. Contractor employees operating critical equipment shall be trained to properly respond during a fire alarm or fire in accordance with the applicable agency's fire prevention procedures, rules or regulations as identified in the delivery order. The Contractor shall obtain all required welding permits prior to any welding.

C.17 SALVAGE

All material and equipment removed or disconnected during the implementation phase of a delivery order issued under this contract shall remain the property of the Government and shall be included in the proposal for each ECM. The Government will identify the equipment it wants stored. Any material and equipment not to be stored and all debris resulting from work under a delivery order shall be removed from the site by the Contractor at his expense.

C.18 ASBESTOS AND OTHER HAZARDOUS MATERIALS

As part of each ECM project proposed, it is preferred that the contractor include the cost of removal of any known hazardous-containing material in each contractor-proposed ECM that involves the removal of such. If the need for removal of hazardous material is known by the Contractor, but the cost is not included in the ECM project proposal, this need shall be identified by the contractor in the proposal.

Should the contractor propose and receive an award for an ECM project, and hazardous material is identified after award, the contractor shall immediately stop work, take measures to reduce the Contractor or building personnel contamination, and immediately notify the Agency Contracting Officer and the building manager of the hazardous material condition and location. The Government shall then either:

- (a) remove and dispose of the material itself, by its own personnel or by separate contract award; or
- (b) give the contractor the option of either a delivery order modification for removing and disposing of the material at its expense, via a renegotiation of either the guaranteed savings and contractor payments for the project and/or of the delivery order project term, or by separate award for the effort. If the contractor performs the effort, he shall be required to remove the hazardous material in the manner agreed upon by the parties, and any equitable adjustment necessary due to the change to or elimination of the ECM involved shall be handled as a delivery order modification.

In addition, hazardous material and PCB handling and disposal, if it is or becomes the responsibility of the Contractor in a delivery order award, shall be handled as follows:

- (a) **Hazardous Material Handling and Disposal:** Hazardous wastes resulting from contractor-owned material and equipment must be disposed of in accordance with Resource Conservation and Recovery Act and all applicable Federal, state and local regulations. All shipping manifests for hazardous waste must be signed by the authorized Federal personnel for the project site, as well as by the Contractor prior to transfer off-site. The Federal agency's generator number will be entered on the manifest. The delivery order will provide additional site specific requirements.
- (b) **PCB Handling and Disposal:** If PCB ballasts exist at a site covered by a delivery order, then the delivery order shall contain the necessary clause addressing PCB recycling and/or disposal requirements to comply with applicable state and local regulations. The delivery order will provide additional site specific PCB handling and disposal requirements (if applicable).

Specific delivery orders will specify the requirements if different than the above, and/or as known at time of award.

C.19 DISPOSAL

Non-hazardous debris, rubbish and nonusable material resulting from the work shall be removed from Government property by the contractor at its expense.

C.20 SAFETY REQUIREMENTS

All work shall be conducted in a safe manner and shall comply with the requirements in the Army Corps of Engineers Safety manual and the Accident Prevention clause in Section I of this contract (FAR 52.236-13). The Government will not provide safety equipment to the Contractor. Additional safety requirements may be included in delivery orders based on individual Federal agency implementing regulations, and/or specific requirements of the delivery order projects.

Other specific requirements relative to safety are as follows:

- (a) Prior to commencing work, the Contractor shall meet with the Agency Contracting Officer and the Agency COR to agree upon administration of the safety program.
- (b) The contractor's workplace may be inspected periodically for OSHA violations. Abatement of violations shall be the responsibility of the Contractor and/or the Government as determined by the Agency Contracting Officer. The Contractor shall provide assistance to the Government representative and Federal or state OSHA inspector if a complaint is filed. Any fines levied on the Contractor by Federal or state OSHA offices due to safety/health violations will be paid promptly by the contractor.
- (c) In accordance with the Accident Prevention clause in Section I of this contract, the contractor shall report to the Agency Contracting Officer or COR all accidents within 24 hours of their occurrence.
- (d) In accordance with the Accident Prevention clause in Section I of this contract, the contractor shall submit to the Agency Contracting Officer or Agency COR a full report of damage to Government property and equipment by contractor's employees or contractor's subcontractors, at any tier. All damage reports shall be submitted to the Agency Contracting Officer or COR within 24 hours of their occurrence.
- (e) A safety and health plan and hazard analysis shall be prepared prior to the start of work on a construction site.

C.21 SECURITY REQUIREMENTS

- (a) **Passes and Badges:** All contractor employees shall obtain employee and vehicle passes and badges as required by the agency for the specific delivery order project site. The Contractor shall, prior to the start of on-site work, submit to the Agency Contracting Officer, or the Agency Contracting Officer's designated representative, an estimate of the number of employees expected to be utilized at any one time on the delivery order. The Government will issue badges it requires without charge. When an employee leaves the contractor's service, the employee's pass and badge shall be returned within ten (10) days.
- (b) **Contractor Vehicles:** Each contractor vehicle shall display the contractor's name such that it is clearly visible. Contractor vehicles shall, at all times, display a valid state license plate and safety inspection sticker. The Government may issue vehicle passes as it determines, and these shall also be displayed so as to be clearly visible.

(c) **Contractor Access to Buildings:**

1. It shall be the contractor's responsibility, through the Agency Contracting Officer or the Agency COR's designated representative, to obtain access to buildings on the delivery order project site, as necessary, and arrange for the buildings to be opened and closed as follows:
 - i. For minor work of two hours or less duration, the contractor shall contact the building manager and security organization.
 - ii. For major work, defined as work in excess of two hours duration, and/or work that will create dust or noise, the contractor shall contact the Agency Contracting Officer or the Agency Contracting Officer's designated representative at least one week in advance of the start of the work. The contractor must provide a description of the work, the number of workers required, and duration of the work.
2. Keys may be issued to the contractor; however, it shall be the contractor's responsibility to make adequate arrangements for security of the building at the end of each work day. The contractor shall be responsible for the cost of replacing any keys that are furnished to and lost by its employees. If the Agency Contracting Officer or the Agency COR decides that a lock must be replaced because of the loss of a key by the contractor's employee(s), the contractor shall pay the cost of that replacement. Similarly, the contractor shall pay the cost of changing a combination if the Agency Contracting Officer or the Agency COR has reasonable cause to assume that the combination has been compromised.
3. Access to tenant spaces must be scheduled with the Agency Contracting Officer or the Agency Contracting Officer's designated representative at least ten (10) days in advance, unless otherwise indicated in the delivery order. Notice must include names of employees to be admitted, expected arrival time, and visit duration. Buildings that require an escort will be identified in the solicitation for a specific project. All access will be during normal working hours, Monday through Friday, as specified in the delivery order.

- (d) **Contractor Access to secure areas** Certain areas of a project site may require that the contractor and its employees have an escort, and/or place limits on the days and times that the contractor and its employees may work in these areas. Specific delivery orders will identify any such secure areas and the requirements for contractor access to them.

C.22 PERMITS

In accordance with the "Permits and Responsibilities" clause in Section I, the contractor shall, without additional expense to the Government, obtain all appointments, licenses, and permits required to conduct the work. The contractor shall comply with all applicable Federal, state and local laws. Evidence of such permits and licenses shall be provided to the Agency Contracting Officer or the Agency COR before work commences.

C.23 WORK SCHEDULE REQUIREMENTS

The contractor shall arrange its on-site work so that it will not interfere with normal Government business. The contractor shall develop a monthly work schedule for all on-site work performed from delivery order award through implementation and performance periods for all ECMs. In no event shall the contractor change approved work schedules without the prior consent of the Agency Contracting Officer or the Agency Contracting Officer's designated representative.

If the contractor desires to work on Saturday, Sunday, holidays, or outside the project site's normal working hours, which normal working hours will be specified in the delivery order, it may submit a request for approval to the Agency COR at least seven (7) working days prior to the proposed start of such work.

SECTION D — PACKAGING AND MARKING

D.1 PACKAGING (APR 1984)

Preservation, packaging, and packing for shipment or mailing of all deliverables against either this contract or any delivery orders issued against this contract, shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rates.

D.2 MARKING (APR 1984)

- (a) Each package, report or other deliverable against this contract, as well as against specific delivery orders issued against this contract, shall be accompanied by a letter or other document which:
 - 1. Identifies the contents, the sender, the applicable delivery order number, the IDIQ contract number, and the individual/office to which the reports or other products are being sent;
 - 2. Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s); and
 - 3. Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.
- (b) For any package, report or other deliverable being delivered to a party other than the Contracting Officer (either the DOE Contracting Officer for this contract or the Agency Contracting Officer for a specific delivery order), a copy of the document required in (a) above shall be simultaneously provided to the Agency Contracting Officer for the office administering the delivery order, as identified in Section G of the delivery order, or if none, to the Contracting Officer for this contract, identified in Section G of this contract.

D.3 RESPONSIBILITY

The contractor shall be responsible for acquiring, shipping, marking, packaging, storing, and installing (and maintaining if indicated in the delivery order) all supplies, equipment, and materials required to implement ECMs accepted and approved by the Agency Contracting Officer during negotiations.

D.4 DELIVERY AND STORAGE

The contractor shall properly store, adequately protect and carefully handle all equipment and materials to prevent damage. Delivery orders may specify any special state and local or agency-specific requirements for hazardous waste handling, storage, shipping and disposal as required for known or anticipated generation of hazardous waste.

SECTION E — INSPECTION AND ACCEPTANCE

E.1 INSPECTION (MAR 1997)

Inspection of all items and services provided under this contract, or by any delivery order issued against it, shall be accomplished by the Agency Contracting Officer's Representative (COR) identified in a specific delivery order, or any duly designated representative(s), and will be conducted in accordance with the provisions and clauses of that title found in Section E below.

E.2 ACCEPTANCE (MAR 1997)

Acceptance of all work and effort under this contract or any delivery order issued against it (including reporting requirements, if any) shall be accomplished by the Agency Contracting Officer for a specific delivery order, or any duly designated representative.

E.3 FAR 52.246-12 INSPECTION OF CONSTRUCTION - FIXED PRICE (AUG 1996)

(a) Definition.

"Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Agency Contracting Officer for the specific project, and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not:

1. Relieve the Contractor of responsibility for providing adequate quality control measures;
2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
3. Constitute or imply acceptance; or
4. Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Agency Contracting Officer's written authorization.

- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Agency Contracting Officer. The Government may charge to the contractor any additional cost of inspection or test when work is not ready at the time specified by the contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Any special and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the Government may:
 - 1. by contract or otherwise, replace or correct the work and charge the cost to the contractor; or
 - 2. terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or non-conforming in any material respect due to the fault of the contractor or its subcontractors, the contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Agency Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract or any delivery order, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or delivery order, or that portion of the work the Agency Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

E.4 INSPECTION AND ACCEPTANCE OF INSTALLED ECMs

Each delivery order will include specific inspection and acceptance criteria pertinent to the delivery order project. The following general inspection and acceptance requirements shall apply to each delivery order, unless otherwise indicated in the delivery order:

- (a) The Contractor shall arrange for the inspection of construction work and construction oversight to verify that the energy efficiency equipment and/or system modifications are properly supplied as designed and specified, and installed in accordance with the

approved installation plan, all applicable codes and standards, the delivery order specifications and in a manner that will provide the intended long-term function, energy savings, and performance of the equipment. (Reference the requirement for Building Commissioning in paragraph C.5.4.) Any monitoring and verification of equipment and systems installed shall be consistent with requirements defined in the approved M&V plan. All start-up and testing shall be conducted in the presence of the Agency COR.

- (b) The Agency Contracting Officer will accept the project installation in writing, in accordance with Section G.3.(a), upon satisfactory completion of the required 30-day test period, and upon receipt of all other required deliverables.
- (c) Each delivery order may include additional agency-specific or site-specific inspection and acceptance requirements, and timeframes for completion. The Contractor shall review each delivery order to determine the recommended applicable inspection and acceptance requirements for that delivery order.

E.5 FAR 52.246-4 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)

- (a) Definitions.

"Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the Government may require the contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may:
 - 1. require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - 2. reduce the contract price to reflect the reduced value of the services performed.

- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may:
 - 1. by contract or otherwise, perform the services and charge to the contractor any cost incurred by the Government that is directly related to the performance of such service; or
 - 2. terminate the contract for default.

E.6 FAR 52.246-20 WARRANTY OF SERVICE (APR 1984)

- (a) Definitions:

"Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, or approves specific services, as partial or complete performance of the contract delivery order.

"Correction," as used in this clause, means the elimination of a defect.

- (b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract and its deliver orders will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Agency Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 30 days from the date the defect or non-conformance is detected by the Government. This notice shall state either (1) the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.
- (c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Agency Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.
- (d) If the Government does not require correction or reperformance, the Agency Contracting Officer shall make an equitable adjustment in the contract price.

SECTION F — DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE OF INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ) CONTRACT AND DELIVERY ORDERS

The contractor shall be required to commence work under this contract only upon issuance of delivery orders against it. The contractor shall be required to commence work on specific delivery orders within the number of days specified in the delivery order, and once the contractor has received a notice to proceed. The contractor shall then prosecute the work diligently and complete the installation of all energy conservation measures (ECMs) in accordance with the schedule established in the delivery order.

F.1.1 Contract Term:

The IDIQ contract term shall consist of a maximum basic performance period of twenty-five (25) years from date of contract award, but with a limitation on the ordering period for placement of delivery orders, beginning on the date of contract award through October 1, 2003. (See Section B.4 for additional information on the ordering period.)

F.1.2 Delivery Order Term:

The delivery order term shall be specified in each delivery order. The delivery order term is comprised of the implementation period for installation of all ECMs after award as indicated on Schedule DO-1 (in months), plus the energy savings performance period, as indicated on Schedule DO-1 (in years). In no event shall a delivery order's term exceed twenty-five (25) years total.

F.2 PRINCIPAL PLACE OF PERFORMANCE (APR 1984)

The principal place of performance will be specified in each delivery order issued against this contract.

F.3 DELIVERABLES

There are no specific deliverables for delivery orders included in this contract. The contractor shall, however, be required to submit the deliverables specified in the reporting requirements included in each specific delivery order, in accordance with the instructions contained in them, as well as in accordance with the provisions in Section D of this contract. (As also indicated in Section B.1, a Sample Reporting Requirements Checklist for Delivery Orders is found in Part III, Section J, Attachment 2 to the contract.)

SECTION G — CONTRACT ADMINISTRATION DATA

G.1 CONTRACT ADMINISTRATION FOR THE GOVERNMENT

- (a) ADMINISTRATION OF THE CONTRACT: Administration of this contract shall be accomplished by the Department of Energy's Golden Field Office and the DOE *[insert]* Regional Office. The following individuals in these offices are responsible for that administration as follows:
1. DOE Contracting Officer: The Contracting Officer for this contract is Beth H. Dwyer, telephone no.: (303) 275-4719; fax no.: (303) 275-4788. E-mail: beth_dwyer@nrel.gov. The contractor shall use the DOE Contracting Officer as the focal point for all matters regarding this contract except technical matters.
 2. DOE Contracting Officer's Representative (COR): The contract COR for projects in the DOE *[insert]* Region is *[insert]*, telephone no.: (XXX) XXX-XXXX; fax no.: (XXX) XXX-XXXX; e-mail: *[insert]*. The contractor shall use the COR as the focal point for all technical matters ONLY. (See Section H for definition of technical matters.)

All correspondence, other than technical correspondence, shall be addressed to the DOE Contracting Officer, with information copies to the DOE COR, to the DOE Patent Counsel (where patent or technical data issues are involved), and to other Government personnel as appropriate. All technical correspondence, excluding correspondence where patent or technical data issues are involved or which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions of the contract, may be addressed to the DOE COR, with informational copies to the DOE Contracting Officer.

- (b) ADMINISTRATION OF DELIVERY ORDERS: Administration of delivery orders issued against this contract shall be accomplished by the Agency Contracting Officer and Agency COR, and any other individuals (Contract Specialist, etc.) as appropriate, identified in each delivery order by the ordering agency contracting office, and preferably in the same format as in Section G.1(a) above. Required correspondence procedures may vary based on the agency's delivery order requirements and if so, will be identified in the delivery order.

G.2 INVOICING INSTRUCTIONS

The contractor shall submit invoices in accordance with the specific instructions provided in each delivery order issued against this contract. These instructions will vary by ordering agency, and will include invoice format, invoice contents and any required attachments or enclosures, submission and addressing instructions, etc. Included with each invoice will be ECM performance data as required by the site-specific M&V Plan, unless not required by the delivery order.

G.3 INVOICE SUBMITTALS FOR DELIVERY ORDER PROJECTS

- (a) The Contractor may submit invoices for ECM payments for the first full month for which the guaranteed energy cost savings accrue. Payments will commence when all ECMs have been installed and accepted and all other required deliverables received in accordance with the requirements in Section E above, and when the installation has been successfully operational for a 30-day test period. The Agency CO or COR for the specific delivery order, or their duly designated representative, shall make the determination of whether the project ECMs have performed in a satisfactory manner for the 30-day period, with guaranteed annual cost savings accruing as required. (Note: Invoices may be submitted as early as the beginning of the required 30-day test/acceptance period, to minimize Prompt Payment Act delays in payments, but the Government will not start payments against invoices until the installation is tested and accepted as described above, and guaranteed savings are tested.)
- (b) In return, the contractor will receive monthly payments based on the annual fixed payment schedule, as established in each delivery order [column (b) of Schedule DO-1 (Final)]. Payment of the contractor's share of accrued savings of less than one month's duration, should that occur, shall be prorated at 1/30th the contractor's share for each calendar day. Any credits becoming due to the Government may be applied against the contractor's subsequent invoices, with appropriate information attached.

G.4 PAYMENT TO THE GOVERNMENT FOR ANNUAL GUARANTEED SAVINGS SHORTFALL

Contractor failure to achieve guaranteed annual cost savings that meet or exceed values specified in Schedule DO-1 (Final), column (b) for a specific delivery order will result in overpayment of negotiated contractor annual payments. A guaranteed savings performance shortfall will be established from invoices and the annual ECM performance verification report. Reimbursement of the Government overpayment of annual contractor payments due to annual cost savings shortfall shall be made by deductions from the contractor's future invoice(s). The Government may also adjust the next year's monthly contractor payments downward to meet the projected annual cost savings level established by the annual ECM performance verification M&V documentation. If monthly contractor payments are adjusted, they will be restored when the contractor can provide evidence that the cause of energy cost savings shortfall has been corrected and ECM performance for the following year will meet or exceed the guaranteed level in Schedule DO-1 (Final), column (a). This remedy is in addition to any other remedy the Government may have under the contract or under the law, including its right to terminate for default.

SECTION H — SPECIAL CONTRACT REQUIREMENTS

H.1 CONFIDENTIALITY OF INFORMATION (APR 1984)

- (a) To the extent that the work under this contract requires that the contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the contractor shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - 1. Information which, at the time of receipt by the contractor, is in the public domain;
 - 2. Information which is published after receipt thereof by the contractor or otherwise becomes part of the public domain through no fault of the contractor;
 - 3. Information which the contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - 4. Information which the contractor can demonstrate was received by it from a third party who did not require the contractor to hold it in confidence.
- (b) The contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the contractor's organization directly concerned with the performance of the contract.
- (c) The contractor agrees, if requested by the Government, to sign an agreement identical, in all material aspects, to the provisions of this clause, with each company supplying information to the contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the contractor received such information.
- (d) The contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by contractor personnel.
- (e) This clause shall flow down to all subcontracts.

H.2 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications and Other Statements of the contractor for this contract, dated *insert by ESCO into awards*, are incorporated by reference. They are located in the official contract file for the award.

Additional representations and certifications may be required by the Agency Contracting Officer for specific delivery order awards.

H.3 TECHNICAL DIRECTION (JAN 1990)

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR) identified in Section G.1(a) of this contract, or of the Agency COR for a specific delivery order issued against this contract. "COR" and "Contracting Officer" throughout this provision refer to either the DOE or Agency personnel, as applicable, and/or indicated. The term "technical direction" is defined to include:
 - 1. Directions to the contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - 2. Provision of written information to the contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - 3. Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the contractor to the Government under the contract.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
 - 1. Constitutes an assignment of additional work outside the Statement of Work;
 - 2. Constitutes a change as defined in the contract clause entitled "Changes";
 - 3. Causes an increase or decrease in the total price or the time required for contract performance;
 - 4. Changes any of the expressed terms, conditions or specifications of the contract; or
 - 5. Interferes with the contractor's right to perform the terms and conditions of the contract.
- (c) All technical direction shall be issued in writing by the COR.

- (d) The contractor shall proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this article and within his authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer shall:
 - 1. Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract;
 - 2. Advise the contractor within a reasonable time that the Government will issue a written change order.
- (e) A failure of the contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes Alternate I" of the contract.

H.4 MODIFICATION AUTHORITY (APR 1984)

Notwithstanding any of the other provisions of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) accept nonconforming work;
- (b) waive any requirement of this contract, or
- (c) modify any term or condition of this contract.

H.5 GOVERNMENT PROPERTY AND DATA (MODIFIED) (JAN 1992)

- (a) Except as otherwise authorized by the Contracting Officer in writing, the Contractor is not authorized to acquire as a direct charge item under this contract any real or personal property items. The Agency Contracting Officer for a specific delivery order issued against this contract may authorize the acquisition of government property or data, as agreed upon and indicated in the specific delivery order.

H.6 GOVERNMENT PROPERTY REGULATIONS

The contractor and its employees shall be knowledgeable of and observe all Government property regulations, posted or otherwise, at the site where performance occurs for specific delivery order projects. A copy of the applicable agency regulations for the specific project site will be provided by the Agency COR for the project, upon contractor request.

H.7 RESPONSIBILITY FOR LOSS OR DAMAGE TO CONTRACTOR PROPERTY

The Government shall be responsible for loss or damage to the property of the contractor and its employees only to the extent authorized by the Federal Tort Claims Act.

H.8 SUBCONTRACTS (MODIFIED) (SEP 1996)

- (a) Prior to the placement of subcontracts and in accordance with the clause, "Subcontracts-Fixed-Price Contracts," the Contractor shall ensure that:
 - 1. they contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flowdown applicability of the clauses entitled "Utilization of Small Business Concerns" and "Small Business Subcontracting Plan" contained in Part II, Section I of the contract;
 - 2. any applicable subcontractor Representations and Certifications are obtained; and
 - 3. any required prior notice and description of the subcontract is given to the Agency Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Agency Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms and conditions, determination of the of any price revision of the delivery order issued against this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.
- (b) The contractor shall also obtain and furnish to the Agency Contracting Officer either an OCI Disclosure Statement or Representation form in accordance with DEAR 952.209-72 "Organizational Conflicts of Interest Disclosure or Representation" for all subcontractors to be utilized under this contract at DOE project sites. No work shall be performed by the subcontractor until the Agency Contracting Officer has cleared the subcontractor for Organizational Conflicts of Interest (OCI).

H.9 ADDITIONAL DELIVERY ORDER CLAUSES FOR WORK ON DOE FACILITIES HAVING CLASSIFIED INFORMATION

- (a) If the ECM project covered by a delivery order involves work to be performed at a Department of Energy facility that has classified information (section 41 of the Atomic Energy Act of 1954, as amended), DEAR 952.204-2 Security (SEP 1997) and DEAR 952.204-70 Classification/Declassification (SEP 1997) may apply to that delivery order. The specific delivery order for such site shall incorporate these clauses, if applicable.
- (b) If the ECM project covered by a delivery order involves work to be performed at a Department of Energy facility that has classified information (section 41 of the Atomic Energy Act of 1954, as amended), the contractor may be required to submit its representation concerning DEAR 952.204-73 Foreign Ownership, Control, or Influence

over Contractor (JUL 1997), and the clause DEAR 952.204-74 Foreign Ownership, Control, or Influence over Contractor (Apr 1984) may apply to that delivery order. The solicitation for such site would request the representation, and the specific delivery order for such site would incorporate the clause, if applicable.

H.10 USE OF NON-FEDERAL PERSONNEL IN EVALUATIONS

The Government requires non-government personnel from Federally-Funded Research and Development Centers (FFRDCs) and their subcontractors as advisors in proposal evaluation and as project facilitators for delivery order projects because aspects of the technical proposal evaluations and project facilitation require specialized training, experience and skills available from the FFRDCs that are not available in the Department of Energy.

H.11 FLOWDOWN OF SAFETY AND HEALTH CLAUSE (JAN 1993)

The clauses at DEAR 952.223-71 and DEAR 970.5204-2, appropriately adjusted to reflect the contractor/subcontractor relationship, shall be included in subcontracts awarded under this contract if the subcontractor will be performing work under the subcontract at a government-owned or leased facility where DOE has required the contractor to submit a management program and implementation plan (MPIP) in accordance with DEAR 970.5204-2. However, DOE reserves the right to require the contractor to submit subcontractor MPIP's to the Agency Contracting Officer for review prior to approval by the contractor and prior to the start of work.

H.12 QUALITY ASSURANCE SYSTEM (DEC 1995)

In the conduct of the work performed under this contract, the contractor agrees to establish and/or maintain the quality assurance system described in the delivery order issued against this contract. If the Contractor has responsibility to perform activities in connection with a nuclear facility, as defined by Title 10, Section 830.3, Code of Federal Regulations, the applicability of the requirements in Section 830.120 shall be determined. Any subcontracts in support of this work shall require subcontractors to comply with the Contractor's quality assurance system.

H.13 WAGE DETERMINATIONS AND DAVIS BACON WAGE RATES

In the performance of delivery order projects issued against this contract, the contractor shall comply with the requirements of any applicable U.S. Department of Labor Wage Determination(s) and Wage Rates which may be issued, or are otherwise applicable relative to that project. A copy of the Wage Determination(s) and/or Wage Rates shall be attached to the delivery order award, in accordance with agency format requirements, or otherwise provided or referenced.

H.14 LIQUIDATED DAMAGES

Since this IDIQ contract is for use by all authorized Federal agencies in a specific region, and the specific ECM projects are not known at this time, the Government cannot make a determination as to whether Liquidated Damages would apply to any individual delivery order. Therefore, a specific solicitation and award for a delivery order project may include appropriate liquidated damages provisions, per Federal agency requirements and/or preferences.

H.15 TITLE TO AND RESPONSIBILITY FOR CONTRACTOR-INSTALLED EQUIPMENT

- (a) All equipment installed by the contractor at an installation is and remains the property of the contractor during the delivery order's term, unless otherwise specified and mutually agreed to in a delivery order. A change in the delivery order from this contract default is acceptable where it will decrease the cost and/or improve the financing of a delivery order project, or as otherwise determined in the best interests of the agency. Appropriate language to protect the parties will be negotiated by the Agency Contracting Officer and contractor for inclusion in a delivery order award, where title to installed equipment is taken by the Government after acceptance of installation/conclusion of the implementation phase of the delivery order term, and prior to the performance period of the delivery order term.
- (b) The contractor may modify, replace, or change the systems and equipment during the delivery order from that originally approved. However, any proposed modification, replacement, or change shall require notification and coordination with and approval of the Agency Contracting Officer. Any such modification, replacement, or change of systems or equipment shall be performed by the contractor at no cost to the Government and shall not interfere with Government operations and mission.
- (c) At the expiration of the delivery order term, all rights, title (unless already vested in the Government), and interest in and to all improvements and equipment constructed or installed on the premises and additions, shall vest in the Government, at no additional cost, free and clear of all and any mechanics liens and encumbrances created or caused by the contractor, or of any security interest by the contractor or its financier(s). The contractor shall surrender possession of said premises and the improvements and equipment to the Government in good repair and condition, reasonable wear and tear accepted.
- (d) If specific IDIQ contract delivery orders or certain ECMs within a delivery order are terminated for convenience, all rights, title, and interest in and to all improvements, additions, or equipment of all ECMs installed by the contractor to which the Government determines to take possession shall vest in the Government. For those ECMs for which the Government takes possession and thereby obtains title (if not already vested), the contractor shall be compensated in accordance with the FAR clause Termination for Convenience (52.249-2).

H.16 REQUIRED INSURANCE

- (a) The contractor shall procure at its expense and maintain during the entire period of performance under this IDIQ contract and the delivery orders awarded to the contractor against it, the following minimum insurance coverage:
 - 1. Comprehensive general liability: \$500,000 per occurrence.
 - 2. Automobile liability: \$200,000 per person, \$500,000 per occurrence, \$20,000 per occurrence for property damage.
 - 3. Workman's compensation: As required by Federal and state workers' compensation and occupational disease statutes.
 - 4. Employer's liability coverage: \$100,000 except in states where workers' compensation may not be written by private carriers.
 - 5. Other insurance as required by State law.
- (b) Specific delivery orders may require less, additional, or different insurance coverage, which will be specified in the delivery order. If different insurance coverage is specified as required for a specific delivery order project, the contractor shall maintain at its own expense for the delivery order term, the revised insurance coverage, in accordance with the following:
 - 1. Prior to commencement of work, the contractor shall furnish to the Agency Contracting Officer a certificate or written statement of the required insurance coverage. The policies evidencing required insurance coverage shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which the delivery order is to be performed and in no event less than thirty (30) days after written notice thereof to the Agency Contracting Officer.
 - 2. The contractor agrees to insert the substance of this clause in all subcontracts hereunder.
 - 3. Nothing herein shall relieve or limit the contractor of liability for losses and damages to person or property as a result of its operations. The contractor shall indemnify and hold harmless the Government from any and all liability associated with the contractor's operations.

H.17 NOTICE OF PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Bonds, using Standard bond forms, SF-25 and SF-25A, or other agency-required documentation, may be required for a delivery order project. If they are required, they shall be provided in accordance with the following provisions (unless altered by the delivery order requirements). These forms, if not otherwise available to the contractor, may be obtained from the Agency Contracting Officer.

H.17.1 Project Financing by Contractor

1. The Government will notify the selected contractor of its intent to award the delivery order. Pursuant to Section H.26, Preaward Requirements, the selected contractor shall furnish acceptable evidence of a surety's commitment to provide performance and payment bonds to the Government.
2. Within 30 days after award of delivery order or acceptance of the Design and Construction Package, whichever is later, the selected contractor shall provide a performance bond (Standard Form 25 or other) and a payment bond (Standard Form 25A or other) in duplicate. The performance bond shall be in a penal sum equal to 100 percent of the Bonded Amount for all ECMs cited in Schedule DO-2. The payment bond shall be in a penal sum as follows:

<u>From Schedule DO-2</u>	<u>Payment Bond Penal Sum</u>
\$0 - \$999,999	50% of Schedule DO-2 Bonded Amount
\$1 - \$4.99 million	40% of Schedule DO-2 Bonded Amount
>\$5 million	\$2.5 million

The performance and payment bonds shall remain in effect during the total implementation period for all ECMs. The ECM implementation period shall include all time required for installation, testing, measuring initial performance, and Government acceptance of all installed ECMs. The performance bond shall be released upon Government acceptance of all contractor-installed ECMs. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, and other subcontractors have been paid in full.

3. Because ECMs are installed on or affixed to Government property, mechanics liens are prohibited. Therefore, the payment bond shall secure the contractor's obligations for payment of laborers, suppliers, and all subcontractors. Each subcontract, under this IDIQ contract or under a specific delivery order, shall include a provision that prohibits placing mechanics liens against any ECMs installed on or affixed to Government property.

H.17.2 Project Financing by Third Party

1. The Government will notify the selected contractor of its intent to award the delivery order. Pursuant to Section H.26, Preaward Requirements, the selected contractor shall provide, to the Government, proof of project financing and acceptable evidence of a surety's commitment to provide performance and payment bonds.
2. Within 30 days of award of the delivery order or acceptance of the Design and Construction Package, whichever is later, the selected contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the Government. The performance bond shall be in a penal sum equal to 100 percent of the total Bonded Amount for all ECMs cited in Schedule DO-2. The selected contractor shall furnish a payment bond

(Standard Form 25A) in duplicate. The payment bond shall be in a penal sum equal as follows:

<u>From Schedule DO-2</u>	<u>Payment Bond Penal Sum</u>
\$0 - \$999,999	50% of Schedule DO-2 Bonded Amount
\$1 - \$5 million	40% of Schedule DO-2 Bonded Amount
>\$5 million	\$2.5 million

The performance and payment bonds shall remain in effect during the total implementation period for all ECMs. The ECM implementation period shall include all time required for installation, testing, measuring initial performance, and Government acceptance of all installed ECMs. The performance bond shall be released upon Government acceptance of all contractor-installed ECMs. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full.

3. Because ECMs are installed on or affixed to Government property, mechanics liens are prohibited. Therefore, the payment bond shall secure the contractor's obligations for payment of laborers, suppliers, and all subcontractors. Each subcontract, under this IDIQ contract or under a specific delivery order, shall include a provision that prohibits placing mechanics liens against any ECMs installed on or affixed to Government property.

H.18 PROTECTION OF FINANCIER'S INTEREST

- (a) The Government recognizes that project financing associated with contractor performance on the multi-year delivery orders issued against this contract may be accomplished using third-party financing, and as such, will permit the financing source to perfect a security interest in the installed energy conservation measures, subject to and subordinate to the rights of the Government. To provide protection of any financier's interest, the contractor may be required to assign to its lenders, some or all of its rights under a delivery order. The Government will consider:
 1. Requests for assignments of monies due or to become due under a delivery order, provided the assignment complies with the Assignment of Claims Act.
 2. Requests for the Government to provide lenders or financiers copies of any cure or show-cause notice issued to the contractor.
 3. Requests by lenders or lienholders for extension of response time to cure or show-cause notices.
 4. A proposed takeover of delivery order performance in the event the contractor defaults in performance, or is bought by another company, or otherwise is replaced by mutual agreement of the parties. Requests for takeover of the delivery order on substantially the same terms and conditions will be approved,

if the proposed substitute party is acceptable to the Government and such takeover is in the Government's best interests.

The Government review and approval of the above requests will not be unreasonably withheld or delayed. In addition, the Government will ensure that all requirements to establish cancellation ceilings and to make Congressional notifications will be satisfied.

H.19 ADDITIONAL OR DIFFERENT CLAUSES AND PROVISIONS FOR DELIVERY ORDERS AND DELIVERY ORDER REQUEST FOR PROPOSAL (DO RFP) FORMAT

As previously indicated, this IDIQ contract may be used by all Federal agencies. Therefore, and in accordance with Section C.1, the solicitation for a specific delivery order (the DO RFP; see below) may contain additional clauses and provisions, as well as differing clauses and provisions than those included in this contract, whether due to FAR, other agency-specific regulations, or agency requirements or practices dictated by the specific project. The agency-specific requirements as documented in the agency solicitation (DO RFP) shall be understood to either override or supplement the contract requirements, as indicated in the DO RFP, and as permitted by the language at Section C.1 of this contract.

The DOE Contracting Officer for this IDIQ contract has created a prescriptive Delivery Order Request for Proposal (DO RFP) format for use by ordering agencies in requesting offers from the IDIQ contractor(s) for specific delivery order projects issued against this contract, and will make it available upon request to any authorized Contracting Officer from any Federal agency. This format provides, in IDIQ contract chronological order, those provisions and clauses throughout the contract which may need to be revised/deleted/replaced in developing the description of a specific project, thereby providing the differing or additional agency and site specific requirements relative to it. Ordering agencies will be encouraged to use this format in requesting offers for specific projects to be ordered against this contract. The purposes for the use of the standard DO RFP format are: (1) to facilitate rapid processing of delivery order project awards; (2) to minimize the contract administration required for the IDIQ contracts and especially the delivery orders; and (3) to promote consistency among the agencies ordering against the IDIQ contracts, for the benefit of the IDIQ contractors.

H.20 PROCEDURES FOR AWARDING DELIVERY ORDERS

The Government has awarded more than one contract for the work specified in the Statement of Work for this contract. The Agency Contracting Officer or other authorized ordering official may issue delivery orders to the contractor and/or other contractors during the terms of the respective contracts. Selection of the contractor for issuance of a specific delivery order will be made pursuant to the provisions in either paragraph (a) or (b) below.

The Agency Contracting Officer for a specific delivery order project, in consultation with the DOE Contracting Officer, shall have the final decision authority as to the extent to which offers will be solicited for individual delivery orders, taking into account technical, economic and performance risk considerations; past performance on previous delivery orders issued against the IDIQ contract; and the factors described below. Such decisions shall not be subject to protest.

No protest under 48 CFR (FAR) Part 33 is authorized in connection with the issuance or proposed issuance of a delivery order under this contract except for a protest on grounds that the delivery order increases the scope, term or maximum value of the contract. The DOE Task and Delivery Order Ombudsman shall be ultimately responsible for reviewing complaints from any contractor arising from the Agency Contracting Officer decision as to the extent to which offers will be solicited for individual delivery orders, and for ensuring in general that all of the contractors receiving awards are afforded a fair opportunity to be considered.

The contractor agrees that issuance of a delivery order in accordance with any of the procedures in this provision is deemed to have provided the contractor with a "fair opportunity to be considered," as that phrase is used in Section 303J(b) of the Federal Property and Administrative Services Act of 1949, as amended.

(a) **Single Source Awards**

The Agency Contracting Officer may issue a delivery order to any one of the contractors with a SUPER ESPC award for this DOE region if an Agency Contracting Officer has determined unilaterally that:

1. The agency's need for the services ordered is of such unusual urgency that providing such opportunity to all contractors would result in unacceptable delays in fulfilling that need;
2. Only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;
3. It is a **Contractor-Identified project** for which rationale can be identified and documented that consideration of other IDIQ contractor offers for the project site is not in the best interests of the Government;
4. It is necessary to place an order with a particular contractor in order to satisfy a minimum guarantee of this contract; and
5. The delivery order should be issued on a sole source basis in the interest of economy and efficiency because it is a logical follow-on to a delivery order previously issued to a contractor on a competitive basis.

(b) **Awards Based on Competition among Eligible IDIQ Contractors:**

1. The Agency Contracting Officer may make selections of IDIQ contractors and issue delivery orders based on competition among two or more of the awardees for these ESPC efforts, i.e., a **Government-Identified** selection process. Evaluation of performance against previous delivery orders against this contract may be used as a means of selecting a limited number of contractors (i.e., less than the total number of IDIQ contractors receiving an award for the Statement of Work for this contract) that may submit proposals.

The Government anticipates awarding fixed price delivery orders against this contract.

Projects will, therefore, be pursued as either a **Contractor-Identified Delivery Order Project** or a **Government-Identified Delivery Order Project**. A **Contractor-Identified Delivery Order Project** is an ESPC project identified/developed by one of the multiple awardee IDIQ contractors and accepted by their applicable DOE Regional COR and an agency client. A **Government-Identified Delivery Order Project** is an ESPC project initiated by a Federal agency's release of a DO RFP and associated technical package to multiple awardee IDIQ contractor(s).

Unless modified in the DO RFP for a Contractor-Identified project, the delivery order process for both types of projects are usually in two steps, requiring the IDIQ contractor to submit an Initial Proposal (for the agency to make its conditional selection of the contractor) followed by submission of a Detailed Energy Survey and Final Proposal. Initial proposal preparation instructions are described at Section H.21, and its evaluation procedures are described in Section H.22. The Detailed Energy Survey requirements are provided in Section H.23. The final proposal preparation instructions are specified in Section H.24 and its evaluation procedures are specified in Section H.25. Ordering agencies may identify different instructions and procedures than those included in these contract sections in the DO RFPs for their specific delivery order projects; however, the instructions and procedures provided below will apply unless other instructions which supersede or revise them are identified in the DO RFPs.

Before an IDIQ contractor may submit a Contractor-Identified Proposal, the IDIQ contractor must first obtain the concurrence of the DOE COR for this contract. This request for concurrence should be in writing and the request should provide sufficient information such that the DOE COR is able to discuss the request with the agency where the project is proposed to be performed. The DOE COR will provide the requested concurrence, or nonconcurrence, in writing, and within fifteen (15) days of the request. Upon this concurrence, an initial proposal within the scope of this contract may be submitted.

H.21 REQUIREMENTS FOR INITIAL PROPOSAL CONTENTS FOR DELIVERY ORDER ECM PROJECTS

The purpose of the Initial Proposal is to provide the minimum information required for the Government (specifically, the agency personnel where the potential project would be performed and the DOE COR) to review the merits of the project and its potential technical feasibility, and thereby make a determination as to whether the potential project will be pursued. After review of the Initial Proposal submitted, the Agency Contracting Officer will respond to the IDIQ contractor in writing indicating whether or not the project will be pursued and by what means. This Notice of Intent to Award (NOI) and the associated DO RFP will detail any other specific requirements. The NOI will normally be issued concurrently with the DO RFP for the project, although concurrent issuances are not required. Note that the NOI and DO RFP may permit or require additional, different or deleted ECMs, with associated scope changes, in the final proposal, or otherwise establish parameters for the final proposal which cause variance from the Initial Proposal.

The Government shall not be liable for costs associated with audits and preparation of Initial Proposals, unless the project addressed by the Initial Proposal later becomes a delivery order award. Further, the Government will not have the rights to the contractor's proprietary work products, such as surveys, data, feasibility study reports, and design documentation.

The Contractor shall submit a technical and price proposal in both electronic (Word and Excel) and hardcopy formats. The technical and price proposal shall be in accordance with the following requirements, i.e., contain at least the following minimum information:

- (a) Identification of ECM Project: Identify the location of the ECM project (e.g., the Federal Agency, the facility manager's name and telephone number, the building and site address, etc.), and provide a narrative summary of the proposed ECM project to include, at a minimum: (a) proposed system or component upgrade, deficiency correction, repair or replacement; and (b) proposed system operational changes and estimated energy usage before and after implementation of the proposed ECMs.
- (b) Energy Savings Proposed: This section shall describe the estimated annual energy savings for the ECM project using Schedule DO-4 (in all applicable energy/demand units). While a detailed energy analysis is not expected at this time, the contractor should submit its (a) assumptions on current facility or energy system operating conditions, (b) assumptions on proposed facility or energy system operating conditions, (c) energy savings calculations using formulae and procedures based on accepted engineering principles, including synergistic effects of other ECMs, and (d) references used for data, assumptions or empirical formulas. This section should contain only sufficient information for the Government to determine whether it is a feasible project.
- (c) M&V Overview: Provide a general description of and support the measurement and verification plan proposed for this project, referenced to the FEMP M&V Guide.
- (d) Management Approach: Provide the following:
 - 1. Organization: Show the organization (by name as available) for implementing and managing the project, to include the responsibilities of each individual/element shown and the lines of authority within the overall organization. Also identify what portions of the effort, if any, are to be subcontracted, and if so, provide the same information for subcontractor organization and personnel.
 - 2. Risk/Responsibility Matrix: The contractor shall complete and submit with its Initial Proposal a Risk/Responsibility Matrix detailing its proposed approach or method to address each area in the Risk/Responsibility Matrix. The format and content of this Risk/Responsibility Matrix is provided at Part III, Section J, Attachment 5. The agency will review and provide comments on its assessment of the proposed contractor and agency roles and responsibilities based on this required contractor submittal.
 - 3. Operations, Maintenance, Repair and Replacement: Show the organization structure and describe the approach for performance of the delivery order's operations, maintenance and repair and replacement requirements.
- (e) Price Proposal: The contractor shall submit completed Schedules DO-1 (Initial), DO-2, DO-3 and DO-4. For a contractor-identified ECM project, Rough Order of Magnitude Estimates are acceptable. For a Government-identified project, the DO RFP may require more detailed estimates. The pricing in these schedules should be supported with the minimum amount of detail to permit the Government to determine whether it is a cost-effective project.

Explanations of the schedules and instructions for their completion are provided below:

Schedule DO-1 (Initial) — Proposed Guaranteed Annual Cost Savings and Annual Contractor Payments:

Schedule DO-1 (Initial) is used to submit the offeror's proposed estimated annual cost savings, and annual contractor payments for a specific delivery order ECM project, and shall be submitted with all delivery order proposals. The values submitted on Schedule DO-1(Initial) are for 12-month periods, beginning after completion by the contractor of the implementation period for all ECMs, and acceptance by the Government. The estimated annual cost savings proposed for each year of the proposed delivery order performance period shall be based on projected energy savings presented in the technical proposal for the delivery order project, and trace to the other DO Schedules required for submission. The annual contractor payments proposed shall be for each year of the proposed delivery order performance period after ECM implementation and acceptance by the Government.

Each DO RFP shall specify the rates and any applicable escalation that will be used for utilities during the delivery order's period of performance. The estimated annual cost savings in column (a) of Schedule DO-I (Initial) shall be based on the specified rates for utilities and any applicable escalation. If specified rates are not used, then the DO RFP must indicate how the contractor is to propose.

Schedule DO-2— Implementation Price for ECMs:

Schedule DO-2 shall be submitted for all delivery order project proposals with estimated pricing, and the schedule may be revised and resubmitted by the selected contractor upon completion of their Detailed Energy Survey and submission of a final proposal. Schedule DO-2 presents the offeror's implementation period investment for each ECM included in a specific delivery order project. It reflects the equipment proposed for installation for each ECM indicated along with its implementation price, the contract mark-up (up to the maximum proposed in Schedule B-1) applied to this pricing, the subtotals of investment for each discrete ECM, and then the calculation of the total estimated implementation price, or investment for all proposed ECMs for the delivery order project. This information is requested as a trace to the information provided in Schedule DO-3.

The total bonded amount on DO-2 will be used to establish performance and payment bond requirements for the ECM implementation period, if applicable, in accordance with Section H-17.

Schedule DO-3 — Performance Period Cash Flow

Schedule DO-3 shall be submitted for all delivery order project proposals with estimated pricing, and the schedule may be revised and resubmitted by the selected contractor upon completion of their Detailed Energy Survey and submission of a final proposal. Schedule DO-3 presents the offeror's proposed project cash flow for a specific delivery order project. The schedule is divided into two sections. The Implementation Period section pertains to the implementation price (which should trace back to the Schedule DO-2 price) less any pre-performance period payments, plus the debt service stream on that investment. The Performance Period section pertains to the total expenses associated with the services the contractor supplies to manage the project, and maintain and verify ECM performance during the performance period of the delivery order term. The offeror shall propose the estimated delivery order cash flows for each year of

the proposed delivery order term. The pricing provided in this schedule shall be traceable to the information provided in DO-1 (Initial) or DO-1(Final)) and DO-2.

As required by the Schedule, the offeror shall specify the Applicable Financial Index used with its source and date, the financing term of the project (in years), the index rate (derived for the project's term from the financial index), the added premium being applied to amortize the investment (up to the maximum Added Premium, based on Schedule B-2), and the resultant Project Interest Rate. The effectivity of the proposed Project Interest Rate is also required to be identified on the Schedule.

Schedule DO-4 — First Year Energy and Cost Savings by ECM, Technology Category, and Delivery Order

Schedule DO-4 shall be submitted for all delivery order project proposals. Schedule DO-4 presents a summary of the proposed estimated annual cost savings that will be achieved following the installation of the ECM's included in the delivery order proposal. Both the ECM number and technology category, per Section C.2 numbering, shall be provided, as well as an adequate description of each ECM and the other indicated energy information. The ECM numbers indicated in this Schedule shall be consistent throughout the offeror's proposal, both technical and price. The annual cost savings requested for each ECM shall be broken down into energy and O&M cost savings. The energy savings shall be presented in the energy type consumed by the equipment and also converted to Btu's for a project summary. Subsequent demand and dollar savings shall be derived from the utility rates presented in the DO RFP for the project site.

Contractors/Offerors shall provide adequate supporting documentation for the estimated annual cost savings submitted in Schedule DO-4, to include whatever detail is pertinent to the specific project.

H.22 REVIEW OF INITIAL PROPOSALS FOR DELIVERY ORDER ECM PROJECTS

H.22.1 CONTRACTOR IDENTIFIED PROJECT PROPOSALS

The Government will review the initial proposal submitted, make a determination as to whether the Contractor-Identified project is a project that the Government wants to pursue further, and notify the contractor of this determination. Government comments on the Initial Proposal will be provided to the contractor within thirty (30) days of its submission. The contractor response to Government comments shall likewise be within thirty (30) days.

Since the Initial proposal for a Contractor-Identified project is based largely upon limited site investigations, the agency is encouraged to limit their level of detail during the review. Foremost consideration should be given to whether the work scope, conditions, and contract term offered in the proposal provide sufficient merit to allow the Contractor to further develop the project in greater detail. As part of this, there should be consideration of whether the estimated pricing and energy savings proposed support the technical proposal, and are realistic.

If the Government determines to pursue the Contractor-Identified project, a Notice of Intent to Award (NOI) will be issued within thirty (30) days of the contractor's final responses to any

Government comments and questions concerning the Initial Proposal. The NOI will request a Detailed Energy Survey and final proposal in accordance with the requirements for proposal contents included in Sections H.23 and H.24 of this contract. A DO RFP will be issued by the Government either concurrent with the NOI, or as agreed upon by the parties. Evaluation of the DES/final proposal by the Government will be in accordance with Section H.25, or as modified and defined in the DO RFP.

H.22.2 GOVERNMENT IDENTIFIED PROJECT PROPOSALS

When the Government determines to pursue a Government Identified delivery order process as opposed to the process for a Contractor-identified project, a somewhat more formal selection of the Contractor occurs. Unlike with the Contractor-Identified process, the DO RFP, with an associated technical data package and/or site description, is issued prior to receipt of an Initial Proposal. The required proposal contents for the Initial Proposal remain the same as for one submitted for a Contractor Identified project, as described in Section H.21 above. However, more defined evaluation criteria to select among potentially several eligible contractors are usually desired and advisable. Therefore, the Contractors submitting Initial Proposals will be evaluated in accordance with the following evaluation factors, unless otherwise modified in a specific DO RFP:

H.22.2.1 Technical Evaluation Factors

Factor 1 - ECM Descriptions & Projected Energy Savings

Factor 2 - Energy Baseline & ECM Performance Measurement

Factor 3 - Management Approach

Factors 1 and 2 are most important and Factor 3 is least important.

A. Factor 1 - ECM Descriptions and Proposed Energy Savings

Each offeror will be evaluated on his/her demonstrated capability to provide each of the site specific required technology categories and ability to accurately project energy savings. Elements to be evaluated include:

1. The proven technical feasibility, reasonableness, and acceptability of the proposed ECMs
2. The level and reasonableness of the proposed energy savings
3. Verification that the energy analysis is based on sound assumptions and engineering principles; verification that impacts on Government facilities and operations are acceptable and reasonable; the suitability and service life of selected equipment for each proposed ECM; proposed environmental impacts are adequately addressed; and verification that proposed project implementation schedules are realistic and reasonable.

B. Factor 2 - Energy Baseline and ECM Performance Measurement

Offerors will be evaluated on the following measurement elements and capabilities:

1. The baseline and M&V plan demonstrates a clear understanding of compliance with M&V protocols.
2. The proposed M&V approach is feasible, reasonable and acceptable for the proposed project ECMs.

C. Factor 3 - Management Approach

Each offeror will be evaluated on the following elements of site management capabilities: the proposed organization to manage and accomplish the proposed ECMs is well suited and addresses all key elements to ensure successful project implementation and maintenance of ECM performance; offeror's organization structure is adequate to provide required operation and maintenance of installed ECMs, whether operation and maintenance is done by the contractor or by the Government; and offeror's training plan is appropriate and suitable for the proposed level of Government O&M responsibility.

If the Government determines to pursue the Government-Identified project, the selected contractor will be notified by the Agency CO of their selection, and a Notice of Intent to Award, with an associated revised DO RFP will be issued within thirty (30) days of the selection. This NOI and DO RFP will request a complete proposal in accordance with the requirements for a DES/final proposal contents included in Sections H.23 and H.24 of the contract, and it will be evaluated in accordance with the evaluation criteria in Section H.25 of this contract, as and if modified by the revised DO RFP.

H.22.2.2 Price Proposal Evaluation Factors

Price proposals will be evaluated to assess:

- (a) The completeness and traceability of the proposed price (i.e. sum of annual contractor payments) to the offeror's technical approach to and understanding of the ECM project proposed.
- (b) The reasonableness as well as realism of the proposed price (payments), relative to the technical project proposed, and the estimated savings indicated as achievable, based on an evaluation of the DO Schedules submitted by the offeror, as well as the pricing detail provided to support them.
- (c) That guaranteed annual energy cost savings exceed the annual contractor payment for each year of the performance period.
- (d) That the mark-up(s) and added premiums proposed for the project are in accordance with the negotiated maximums for the Contractor, as identified in Schedules B-1 and B-2 of this contract. (See Part III, Section J, Attachment 3.)

H.23 DETAILED ENERGY SURVEY

The selected contractor for both Contractor and Government-Identified projects, shall, within the time specified in the DO RFP from the receipt of Government's Notice of Intent to award, conduct a Detailed Energy Survey (DES) of facilities and energy systems at the project site to confirm the contractor's ability to achieve the estimated annual cost savings [Schedule DO-1(Initial), column (a)] indicated in the Initial Proposal, or in any event to identify and confirm sufficient annual cost savings to cover the annual costs of the agreed upon post-DES project that is planned to be negotiated.

The final proposal shall include the results of the DES that document the relevant existing conditions of applicable Government facilities, including but not limited to:

- Building physical conditions
- Hours of use or occupancy
- Area of conditioned space
- Inventory of energy-consuming equipment or systems
- Energy-consuming equipment operating conditions and loads
- Baseline weather (i.e., Cooling and Heating Degree Days)
- First Year Energy and energy cost savings estimates
- Site specific M&V Plan
- Proposed construction and M&V schedules.

For each ECM proposed, the Contractor shall provide a detailed energy analysis documenting the proposed annual energy savings performance of the ECM after installation, startup and testing. Documentation of the analysis shall include, at a minimum:

Offeror's assumptions on current facility or energy system operating conditions;
 Offeror's assumptions on proposed facility or energy system operating conditions;
 Energy savings calculations using formulae and procedures based on accepted engineering principles, including synergistic effects of other ECMs;
 Cite references used for data, assumptions or empirical formulae.

The DES/final proposal may indicate that existing conditions vary from Government provided or contractor acquired data or assumptions proposed for any of the individual ECMs. Any variance between survey findings and the assumptions made for individual ECMs shall require the contractor to revise all supporting documentation for each affected ECM in its proposal. These revisions and supporting documentation shall be included as part of the DES documentation in the final proposal. The DES/final proposal shall also fully document the existing building conditions and proposed energy baseline. The DES results identified in the final proposal ultimately establish the mutual agreement of the parties on the energy and facility baseline conditions and site specific M&V Plan for the delivery order. The Contractor shall revise the DES/final proposal based on Government review and comments, as required and agreed to by the parties handling a specific delivery order project, and at a minimum based on final negotiations.

H.24 REQUIREMENTS FOR FINAL PROPOSAL CONTENTS FOR DELIVERY ORDER ECM PROJECTS

Proposals shall be submitted initially on the most favorable terms from a price and technical standpoint to the Government. The Government reserves the right to accept or reject the proposal without further

discussions. As required by the DO RFP for a delivery order project, the contractor shall submit a technical and price proposal, in both electronic (Word and Excel) and hardcopy formats, as follows:

(NOTE: Any limitations on size of proposals will be indicated in the DO RFP for a project.)

H.24.1 Format for Technical Proposal:

The technical proposal shall be prepared in the following format:

A. ECM Descriptions and Projected Energy Savings (including ECM Summary Schedule for Delivery Order)

1. The contractor shall complete and submit Delivery Order Schedule DO-4 summarizing all ECMs proposed for the delivery order.
2. For each ECM proposed, the contractor shall submit narrative information for items, as applicable, in the format specified below:
 - (a) ECM No. _____
 - (b) ECM Title and Executive Summary
 1. Detailed Description of ECM
 2. Location Affected
 3. ECM Interface with Government Equipment
 4. Proposed Equipment Identification - Provide manufacturer, model number and optional equipment proposed for each ECM component, including manufacturer's literature and specifications.
 5. Physical Changes — List major physical changes to equipment or facilities required to install proposed ECM such as relocation or removal of equipment.
 6. First Year Energy Savings Proposed
 - (a) Proposed ECM annual energy savings (in all applicable energy/demand reduction units)
 7. Utility Interruptions — Specify extent of any utility interruptions needed for installation of proposed ECM.
 8. Agency Support Required — Specify any government agency support required during implementation of the ECM.
 9. Potential Environmental Impact — Briefly describe any potential environmental impact resulting from installed ECM.

10. ECM Project Schedule — Provide a project schedule to include the duration of the following key phases:
 - (a) Engineering/Design/Acceptance.
 - (b) Equipment Procurement/Lead Time (i.e., date required to acquire equipment and delivery on-site).
 - (c) Installation & Commissioning

B. Energy Baseline and ECM Performance Measurement

The contractor shall describe how it will provide a complete measurement and verification (M&V) plan for the proposed delivery order. The plan shall include, but not be limited to:

1. M&V Overview — Description of the measurement plan proposed for this project referenced to the FEMP M&V Guide.

2. Specific M&V Plan — Define a site specific plan, which must include the following elements for each proposed ECM:
 - (a) Objectives — a statement of what is to be estimated (i.e., gross annual Kwh savings on a project basis).
 - (b) Parameters to be monitored - indicate parameters to be recorded that will be used in the estimation of annual energy savings, including variable load, hours of operation, installation status of measures, etc.; other parameters related to secondary objectives, such as in the case of lighting, may include reduction in lighting levels.
 - (c) Sampling plan (if required), including:
 1. Designation of usage groups — define usage groups for areas with similar characteristics.
 2. Calculation of population(s) and sample sizes(s) by usage group — present the calculation and assumptions used to determine sample size by each usage group area.
 - (d) Data collection plan, including:
 1. Specify data to be collected in terms of parameters, unit of measurement, points of measurements, length of time and intervals of measurements; raw, meter data (if available) as well as analyzed and summary data must be obtained.
 2. Identification of instrumentation and metering equipment name and documentation on equipment specifications of monitoring devices.
 3. Calibration of equipment — describe protocols for calibrating equipment.
 4. Data gathering and quality control — describe quality control procedures for checking completeness and accuracy of the recorded data.
 5. Period of monitoring — specify periods of monitoring including duration and frequency.
 - a. Analysis Method — describe in detail the method of analysis to estimate annual energy savings based on recorded data; include a discussion on relevant equations and assumptions, and document all calculations and assumptions.
3. Pre-Installation energy and facility performance baseline including:

- (a) equipment/systems,
 - (b) baseline energy use,
 - (c) factors which influence baseline energy use, and
 - (d) system performance factors (e.g., lighting levels, temperature set points).
- 4. Post-installation facility conditions including
 - (a) equipment/systems,
 - (b) post-installation energy use, and/or
 - (c) factors that influence post-installation energy use.
- 5. Determination of energy savings based on the selected approach and the pre and post-installation conditions.
- 6. Plan for future periodic (annual) measurements of ECM and facility performance and calculation of current period (year) savings.
- 7. Plan for resolving disputes regarding issues such as baseline, baseline adjustment, energy savings calculation and the use of periodic measurements.

C. Management Approach

- **Organization.** Show the organization for implementing and managing the site specific project. Proposed organization shall contain the responsibilities of each element shown on the organization chart. Identify primary personnel by name in each element. Show the lines of authority within the organization. If portions of the project are to be subcontracted (e.g., design of an energy conservation system), identify the subcontracted function, and which element of the contractor's organization will manage the subcontract(s).
- **Risk/Responsibility Matrix.** The contractor shall complete and submit with its Final Proposal a final responsibility matrix detailing its proposed approach or method to address each area in the Risk/Responsibility Matrix. Final Proposal submission of this Risk/Responsibility Matrix should reflect revisions based on results of agency discussions and agreements with the contractor on the Risk/Responsibility Matrix it submitted in the Initial Proposal. The format and content for the Risk/Responsibility Matrix is provided at Part III, Section J, Attachment 5. The agency will review and provide comments, as required, on its assessment of the contractor and agency roles and responsibilities based on this required contractor submittal. The Contractor shall submit a Final Proposal Risk/Responsibility Matrix based on agency comments and requests.
- **Operations, Maintenance, Repair and Replacement.** Show the organization structure and describe the approach for performance of the delivery order's operations, maintenance and repair and replacement requirements.

- **ECM Training.** Describe in detail how training for each ECM will be provided for Government personnel. Approach should be customized depending on the level of Operations and Maintenance responsibility to be assumed by Government personnel.

H.24.2 Format for Price Proposal:

Based on the DES results, the selected contractor shall submit a completed Schedule DO-1 (Final), reflecting the contractor's DES annual cost savings [Schedule DO-1 (Final), column (a)]. The selected contractor shall submit as part of his final proposal a copy of the detailed energy survey findings, data, and calculations used to support the Schedule DO-1 (Final). The instructions and format for the Schedule DO-1(Final) are provided below.

The selected contractor shall also resubmit Schedules DO-2, DO-3, and DO-4 reflecting changes as a result of the DES. (Refer to Section H.21(e) for descriptions of these schedules.)

The Contractor/Offeror shall provide adequate supporting documentation for the Final Proposal implementation and performance period pricing submitted in Schedules DO-2 and DO-3 for the final proposal, to include whatever detail is pertinent to the specific project. This information is required as proposal backup to permit evaluation of price reasonableness for the scope of the project proposed. (If inflation is included in the calculations, an explanation of the method used and rationale therefore must be provided.) The following provides what is considered a minimum level of detail required to meet the requirement of adequate supporting documentation.

Supporting documentation shall be organized by the chronology of proposed contractor work as follows:

Section 1 - Summarize Project level Expenses from Project Development through DO Award (no ECM breakout required) to include:

- DES (labor hours and cost delineated by general rate categories)
- Pre-Design (labor hours and cost delineated by general rate categories)
- Project Management (labor hours and cost delineated by general rate categories)
- Subcontracts (delineated by subcontractor)
- Travel and Expenses
- **Total Expenses through DO Award**

Section 2 - Summarize Implementation Period Pricing allocated by ECM (project level implementation expenses shall be allocated to ECMs by appropriate method) to include:

- Equipment/Material (delineated by ESCO and subcontractors)
- Post DO Award Design (labor hours and cost delineated by general rate categories)
- Project Management (labor hours and cost delineated by general rate categories)
- Installation Labor (delineated by ESCO and subcontractors)
- Testing (delineated by ESCO and subcontractors)
- Commissioning (delineated by ESCO and subcontractors)
- M&V (delineated by ESCO and subcontractors)
- Other (e.g. bonds, quality/safety compliance, training, documents/submittals)

Section 3 - Summarize Performance Period Expenses by Project (aligned with proposed DO-3 line item expenses) to include, as applicable:

- Project Management (delineated by material and labor)

- Operations (delineated by material and labor)
- Maintenance (delineated by material and labor)
- Repair & Replacement (delineated by material and labor)
- M&V (delineated by material and labor)
- Other (delineated by material and labor)

Labor Hours Cost shall be delineated by general rate categories.

Support provided for proposed subcontractor efforts, if based on and evidenced by competitive quotations, need not be supported in any greater detail, unless the low bids are not proposed for use in the delivery order project, and/or unless otherwise required by the DO RFP.

The Contractor/Offeror shall likewise provide adequate supporting documentation for the estimated annual cost savings submitted in Schedule DO-4, to include whatever detail is pertinent to the specific project.

Further, the Contractor/Offeror shall indicate the elements of indirect expense included in the proposed markups for the specific delivery order project.

Schedule DO-5 shall also be provided as part of the final proposal. The instructions and format for Schedule DO-5 are also provided below.

Schedule DO-1 (Final) — Guaranteed Annual Cost Savings and Annual Contractor Payments

Schedule DO-1 (Final) shall be submitted to present the selected contractor's guaranteed annual energy savings, annual contractor payments and annual cancellation ceilings. Based on the detailed energy survey results, the selected contractor only shall submit a completed Schedule DO-1 (Final), reflecting the contractor's guaranteed annual cost savings in column (b). The selected contractor shall submit a copy of the detailed energy survey findings, data, and calculations used to support Schedule DO-1 (Final) with the DO-1 (Final) submission.

The contractor shall receive monthly payments based on the negotiated annual fixed payment schedule, as established in the Schedule DO-1(Final), column (c), and included in the delivery order award. This represents the delivery order price and will be supported by the information submitted in the other DO Schedules submitted with the delivery order proposal, originally or as revised as part of the DES.

Schedule DO-5 — Annual Cancellation Ceiling Schedule

Schedule DO-5 shall be submitted for all final delivery order project proposals. Column (b) of Schedule DO-5, "Total Cancellation Ceiling," is a presentation of proposed, and later negotiated, annual cancellation ceilings to establish the maximum termination liability in the event of contract cancellation or termination. Actual termination charges will be negotiated as part of any cancellation or termination settlement, per established FAR requirements. Column (a) of Schedule DO-5, "Outstanding Capital Investment," is a fixed subset of the Total Cancellation Ceiling in Column (b). It constitutes the remaining unamortized principal on Total Amount Financed for each time period specified in the Schedule DO-5, plus any prepayment charges as negotiated and included in the pricing (including financing) of the project.

All of the above schedules are provided in Part III, Section J, Attachment 4 to this contract.

H.24.3 Government Response to Final Proposal

Within thirty (30) days of submission of the contractor's final proposal, the Government will complete its review and provide comments to the contractor.

H.25 FINAL PROPOSAL EVALUATION FOR GOVERNMENT IDENTIFIED DELIVERY ORDER ECM PROJECTS

Proposals will be evaluated using the criteria specified herein. Proposals will be evaluated using factors in two (2) categories, technical and price. Technical Evaluation Factors are more important than Price Evaluation Factors. The Government is more concerned about obtaining superior technical features (e.g., comprehensive technical proposals) than making an award at the lowest cost to the Government. However, the Government will NOT make an award at a price premium it considers disproportionate to the benefits associated with a technically superior proposal, nor where the price proposal does not substantiate the technical approach and estimated savings. **Therefore, the Government will select the contractor whose proposal is the best value to the Government to perform the delivery order, based on technical AND price evaluations.** Awards after selection will be conditioned upon the selected contractor meeting the preaward requirements as specified in the provision at Section H.26.

H.25.1 Technical Evaluation Factors

Factor 1 — ECM Descriptions & Projected Energy Savings

Factor 2 — Energy Baseline & ECM Performance Measurement

Factor 3 — Management Approach

Factors 1 and 2 are most important and Factor 3 is least important.

A. Factor 1 — ECM Descriptions and Proposed Energy Savings

Each offeror will be evaluated on his/her demonstrated capability to provide each of the site specific required technology categories and ability to accurately project energy savings. Elements to be evaluated include:

1. The proven technical feasibility, reasonableness, and acceptability of the proposed ECMs
2. The level and reasonableness of the proposed energy savings
3. Verification that the energy analysis is based on sound assumptions and engineering principles; verification that impacts on Government facilities and operations are acceptable and reasonable; the suitability and service life of selected equipment for each proposed ECM; proposed environmental impacts are adequately addressed; and verification that proposed project implementation schedules are realistic and reasonable.

B. Factor 2 — Energy Baseline and ECM Performance Measurement

Offerors will be evaluated on the following measurement elements and capabilities:

1. The baseline and M&V plan demonstrates a clear understanding of compliance with M&V protocols.
2. Verification that the sampling and data collection plans are acceptable and reasonable and that they are based on proposed ECMs
3. Methods to establish pre and post-installation conditions and determine energy savings are adequate and reasonable
4. Periodic measurement approaches for ECMs and facility performance are adequate and reasonable to provide assurance of continued effective monitoring of ECM performance.

C. Factor 3 — Management Approach

Each offeror will be evaluated on the following elements of site management capabilities: the proposed organization to manage and accomplish the proposed ECMs is well suited and addresses all key elements to ensure successful project implementation and maintenance of ECM performance; offeror's organization structure is adequate to provide required operation and maintenance of installed ECMs, whether operation and maintenance is done by the contractor or by the Government; and offeror's training plan is appropriate and suitable for the proposed level of Government O&M responsibility.

H.25.2 Price Proposal Evaluation Factors

Price proposals will be evaluated to assess:

- (a) The completeness and traceability of the proposed price (i.e. sum of annual contractor payments) to the offeror's technical approach to and understanding of the ECM project proposed.
- (b) The reasonableness as well as realism of the proposed price (payments), relative to the technical project proposed, and the estimated savings indicated as achievable, based on an evaluation of the DO Schedules submitted by the offeror, as well as the pricing detail provided to support them.
- (c) That guaranteed annual energy cost savings exceed the annual contractor payment for each year of the performance period.
- (d) That the mark-up(s) and added premiums proposed for the project are in accordance with the negotiated maximums for the contractor, as identified in Schedules B-1 and B-2. (See Part III, Section J, Attachment 3.)

The price proposal will not be point scored.

Unless otherwise specified in the DO RFP, if the Schedule DO-1(Final) guaranteed annual cost savings are less than 90% of Schedule DO-1(Initial) estimated annual cost savings contained in the contractor's Initial Proposal, then the Government may select the next ranked contractor's proposal for award, where award is again subject to meeting the preaward requirements. If the Government selects the next ranked contractor's proposal, the Government shall not be responsible for any costs incurred by the previously selected contractor as a result of this delivery order requirement and procedure.

Even if the Schedule DO-1(Final) guaranteed annual cost savings are within the specified percentage of the estimated annual cost savings and negotiations are necessary, the Government may select the next ranked contractor's proposal, if the selected contractor does not negotiate in good faith. In these cases, the Government shall not be responsible for any costs incurred, such as proposal preparation costs or the costs incurred in conducting the detailed survey.

H.26 PREAWARD REQUIREMENTS

1. Pre-Award Requirements - Project Financing by Contractor for Delivery Orders:
 - (a) If the selected contractor is to provide its own financing for project execution, the selected contractor shall have up to [*time specified in delivery order*], from Government's acceptance of the Detailed Energy Survey, Guaranteed Annual Cost Savings [Schedule DO-1(Final)], to provide evidence of surety's commitment for bonding of proposed delivery order's building(s) and site per paragraph H.17.
 - (b) Should the selected contractor fail, within the specified timeframe, to provide acceptable evidence of bonding capability, the Government may determine the offer not acceptable.
2. Pre-Award Requirements - Project Financing by Third Party:
 - (a) If the selected contractor requires third party financing for project execution, the selected contractor shall have up to [*time specified in delivery order*], from Government's acceptance of the Detailed Energy Survey, Guaranteed Annual Cost Savings (Schedule DO-1, Final), to provide for delivery order projects proposed: (1) proof of financing commitment; and (2) evidence of surety's commitment for bonding per H.17.
 - (b) Proof of financing shall be provided by written statement(s) from the financier(s), signed by authorized corporate officer(s) indicating a firm commitment of funds for project financing.
 - (c) The Government recognizes the unique aspects of third party financing of energy savings performance contracts. The Government is willing to discuss and consider third party financier needs for any notification(s) during the delivery order term. (See also Section H.18, Protection of Financier's Interest.)

- (d) Should the selected contractor fail, within the specified timeframe, to provide proof of financing commitment and acceptable evidence of bonding capability, the Government may determine the offer not acceptable.

PART II — CONTRACT CLAUSES

SECTION I — CONTRACT CLAUSES

FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The provisions incorporated by reference are both Federal Acquisition Regulation (FAR) clauses and Department of Energy Acquisition Regulation (DEAR) clauses. All of these provisions are available on the Internet, in full text, at: <http://farsite.hill.af.mil/vffar1.htm>, and <http://farsite.hill.af.mil/vfdoe1.htm> respectively.

<u>Clause No.</u>	<u>Clause Name</u>
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52.202-1	DEFINITIONS (OCT 1995), ALTERNATE I (APR 1984)
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This FAR clause, 52-202-1, is hereby modified by substituting the following for paragraph (a) of the clause:

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

This same clause is further modified by substituting the following for paragraph (c) of this clause:

- (c) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

52.203-3	GRATUITIES (APR 1984)
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52.203-5	COVENANT AGAINST CONTINGENT FEES (APR 1984)
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52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
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52.203-7	ANTI-KICKBACK PROCEDURES (JUL 1995)
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52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
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52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)
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52.204-5	WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)
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52.204-6	DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 1999)
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000)
52.219-16	LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
52.222-3	CONVICT LABOR (AUG 1996)
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (SEP 2000)
52.222-26	EQUAL OPPORTUNITY (FEB 1999)
52.222-35	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)
52.223-6	DRUG-FREE WORKPLACE (JAN 1997)
52.223-14	TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)
52.227-1	AUTHORIZATION AND CONSENT (JUL 1995)
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)
52.228-5	INSURANCE — WORK ON A GOVERNMENT INSTALLATION (JAN 1997)
52.229-3	FEDERAL, STATE AND LOCAL TAXES (JAN 1991)
52.229-5	TAXES - CONTRACTS PERFORMED IN THE U.S. POSSESSIONS OR PUERTO RICO (APR 1984)
52.232-17	INTEREST (JUN 1996)
52.232-23	ASSIGNMENT OF CLAIMS (JAN 1986)
52.233-1	DISPUTES (DEC 1998), ALTERNATE I (DEC 1991)

52.233-3	PROTEST AFTER AWARD (AUG 1996)
52.236-13	ACCIDENT PREVENTION (NOV 1991)
52.242-13	BANKRUPTCY (JUL 1995)
52.244-5	COMPETITION IN SUBCONTRACTING (DEC 1996)
52.249-2	TERMINATION FOR CONVENIENCE OF GOVERNMENT (FIXED PRICE) (SEP 1996)
952.227-13	PATENT RIGHTS — ACQUISITION BY THE GOVERNMENT (SEP 1997)
952.208-70	PRINTING (APR 1984)
952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)
970.5204-2	INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)
970.5204-59	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999)

THE FOLLOWING CLAUSES ARE APPLICABLE TO
THE CONSTRUCTION PHASE(S) OF THE CONTRACT AND DELIVERY ORDERS

52.222-6	DAVIS-BACON ACT (FEB 1995)
52.222-7	WITHHOLDING OF FUNDS (FEB 1988)
52.222-8	PAYROLLS AND BASIC RECORDS (FEB 1988)
52.222-9	APPRENTICES AND TRAINEES (FEB 1988)
52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
52.222-11	SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)
52.222-12	CONTRACT TERMINATION — DEBARMENT (FEB 1988)
52.222-13	COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)
52.222-14	DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)
52.222-15	CERTIFICATION OF ELIGIBILITY (FEB 1988)
52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

52.227-4	PATENT INDEMNITY — CONSTRUCTION CONTRACTS (APR 1984)
52.228-2	ADDITIONAL BOND SECURITY (OCT 1997)
52.236-2	DIFFERING SITE CONDITIONS (APR 1984)
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
52.236-5	MATERIAL AND WORKMANSHIP (APR 1984)
52.236-6	SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)
52.236-7	PERMITS AND RESPONSIBILITIES (NOV 1991)
52.236-8	OTHER CONTRACTS (APR 1984)
52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS (APR 1984)
52.236-10	OPERATIONS AND STORAGE AREAS (APR 1984)
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)
52.236-12	CLEANING UP (APR 1984)
52.236-14	AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)
52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)
52.236-21	SPECIFICATION AND DRAWINGS FOR CONSTRUCTION (FEB 1997)
52.243-4	CHANGES (AUG 1987)
52.246-13	INSPECTION - DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS (AUG 1996)
52.246-19	WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (DEC 1989) — ALTERNATE III (DEC 1989)
52.246-21	WARRANTY OF CONSTRUCTION (MAR 1994)
52.249-10	DEFAULT (FIXED PRICE CONSTRUCTION) (APR 1984)
THE FOLLOWING CLAUSES ARE APPLICABLE TO THE SERVICES PHASE(S) OF THE CONTRACT AND DELIVERY ORDERS	
52.222-41	SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

52.222-42	STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)
52.222-43	FAIR LABOR STANDARD ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENTS (MULTIPLE YEAR AND OPTION CONTRACT) (MAY 1989)
52.227-3	PATENT INDEMNITY (APR 1984)
52.232-1	PAYMENTS (APR 1984)
52.232-8	DISCOUNTS FOR PROMPT PAYMENT (MAY 1997)
52.232-25	PROMPT PAYMENT (JUN 1997)
52.243-1	CHANGES — FIXED PRICE (AUG 1987) ALTERNATE I (APR 1984)
52.246-25	LIMITATION OF LIABILITY — SERVICES (FEB 1997)
52.249-8	DEFAULT (FIXED PRICE SUPPLY AND SERVICES) (APR 1984)

PART III — LIST OF DOCUMENTS, EXHIBITS
AND OTHER ATTACHMENTS

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J — LIST OF ATTACHMENTS

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DEFINITIONS OF TERMS APPLICABLE TO THIS CONTRACT

Adjusted Energy Baseline. An Energy Baseline that has been adjusted to compensate for factors that would have changed energy consumption in the absence of any energy conservation measures (i.e., factors affecting baseline energy use beyond the contractor's control). Examples of such factors include increases or decreases in conditioned or illuminated space, changes in occupancy or building use, facility renovation, or extremes in weather.

Acceptance of Implementation Phase. The term acceptance means an authorized representative of the Government has inspected and accepted the contractor-installed energy conservation measures, and that these installed energy conservation measures are operational and comply with the delivery order's performance requirements and specifications. Government acceptance shall not relieve the Contractor from responsibility for continued compliance with delivery order requirements during the delivery order's term.

Added Premium. The Added Premium is the number of basis points (basis point=1/100 of a percentage point) that, when added to the index rate from an applicable financial index for a delivery order project, equals the total Project Interest Rate (a fixed annual percentage). The entity providing the capital to finance a project, which may be the Contractor or a third party, can recover financing expenses and return on investment either in the added premium or as a separate Financing Procurement Price. In most cases, contractors use project financing capital from third party financiers, and the added premium is a pass-through expense from the third party financier. In such cases, the Contractor may recover the cost of arranging third-party financing through the Financing Procurement Price in Schedule D0-3. The total Project Interest Rate charged for project financing cannot therefore exceed the applicable index rate plus the applicable maximum added premium from Schedule B-2, excluding financing fees/financing procurement cost included in the Financing Procurement Price for third-party financed delivery order projects.

Annual Energy Audit. The term annual energy audit means a procedure including, but not limited to, verification of the achievement of guaranteed energy cost savings and energy unit savings, resulting from implementation of energy conservation measures and a determination of whether an adjustment to the energy baseline is justified by conditions beyond the Contractor's control. Also known as "Annual Measurement & Verification Report".

Applicable Financial Index. The financial index upon which the project interest rate for a delivery order project is based is the first component of such an interest rate. This term then, as used in the contract, applies to any financial index that is available and usable as a basis/"floor" upon which added premiums allowed by Schedule B-2 of the contract may be applied, and therefore applicable to the project for which it is proposed as a basis for the Project Interest Rate. This index may be any acceptable market index in effect at the time of a delivery order project for which it is proposed, to include U.S. Government Treasury, Swap Rate, etc.

Contractor-Identified ECM Project is an ECM project identified/developed by one of the multiple awardee IDIQ contractors and accepted by their applicable DOE COR and an agency.

Contracting Officer (CO) and Contracting Officer's Representative (COR). The following four definitions are provided to discriminate between the DOE and Agency CO and COR representatives:

DOE Contracting Officer or Contracting Officer refers to the DOE CO, responsible for the administration of the IDIQ contracts.

Contracting Officer's Representative refers to the DOE COR, responsible for providing technical direction and administration of the IDIQ contracts.

Agency Contracting Officer refers to the ordering agency CO, responsible for award and administration of delivery orders against the IDIQ contracts.

Agency Contracting Officer's Representative COR refers to the ordering agency COR, responsible for technical direction and administration of the delivery orders issued against the IDIQ contracts.

Construction Finance Charges. Construction finance charges are the contractor's costs of financing the construction/installation price or cost of construction. A contractor may not require construction financing for a specific delivery order. If a contractor does not require construction financing for a specific delivery order, this cost element would be zero. This cost element should be included in Financing Procurement Price on DO-3 (not as a direct cost or implementation expense).

Delivery Order. The document that provides the details and requirements (over and above those already in the IDIQ contract or in addition to or different than them) for delivery of property and services within the scope of the delivery order.

Delivery Order Term. The term of a Delivery Order contract issued against a DOE Super ESPC contract is defined as the sum of the Implementation and Performance Periods negotiated and identified in Schedule DO-1 (Final). The maximum Delivery Order (DO) term is 25 years from Delivery Order award.

Delivery Order Project. The complete package of ECMs included in a delivery order for a facility or agency. Investment and project financing is provided by the ESCO to implement an ECM Project, which includes aggregation or bundling of individual ECMs, resulting in energy and energy-related savings to the facility.

Detailed Energy Survey. The term Detailed Energy Survey means a procedure which may include, but is not limited to, a detailed analysis of the energy cost savings and energy unit savings potential, building conditions, energy consumption, and hours of use or occupancy for a facility, for the purpose of preparing final technical and price proposals.

Energy Baseline. The term "energy baseline" means the amount of energy that would have been consumed annually without implementation of energy conservation measures based on historical metered data, engineering calculations, submetering of buildings, or energy consuming systems, building load simulation models, statistical regression analysis, or some combination of these methods.

Energy Conservation Measure. Measures that are applied to an existing Federally-owned building or facility that improves energy efficiency, are life cycle cost effective under 10 Code of Federal Regulations Part 436, Subpart A, and involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operation and maintenance efficiencies, or retrofit activities. ECM is interpreted to include measures that result in energy and/or energy-related cost savings that may not necessarily improve energy efficiency.

Energy Cost Savings. A reduction in the cost of energy and related operation and maintenance expenses from a base cost established through a methodology set forth in an energy savings performance delivery order, utilized in an existing Federally-owned building or other Federally-owned facilities as a result of: (1) the lease or purchase of operating equipment, improvements, altered operations and maintenance, or technical services; or (2) the increased efficient use of existing energy sources by cogeneration or heat recovery.

Energy-Related Cost Savings. Energy-related cost savings are reductions in expenses (other than energy costs) related to energy-consuming equipment, generally affecting operations, maintenance, renewal, or repair expenses of equipment . [See also recurring energy-related cost savings and nonrecurring energy-related cost savings.]

Estimated Energy Cost Savings. Estimated energy cost savings are the contractor-estimated energy cost savings in dollars per year for each ECM, and equal the estimated energy savings multiplied by the established energy prices in appropriate units. For ECMs with multiple energy type impacts, energy cost savings equals the sum of the products of the energy savings by energy type and established energy prices. The established energy prices are based on the energy tariffs or rate schedules provided in the solicitation and the estimated ECM energy and demand reductions, and therefore may vary by ECM. Since energy cost savings occur each year after ECMs are implemented, they are a recurring cost savings. Estimated energy cost savings by ECM are entered into Schedule DO-4, column (e).

Financing Procurement Price. The financing procurement price is the price offered by the contractor for the service of arranging the project financing, obtaining any required payment and performance bonds, and providing construction phase financing.

Government-Identified Delivery Order Project is a project initiated by a Federal agency's release of a DO RFP to multiple awardee IDIQ contractor(s).

Guaranteed Annual Cost Savings. The guaranteed annual cost savings are the levels of annual cost savings the contractor is willing to guarantee for a delivery order project. The proposed values for these savings appear in Schedule DO-1 (Initial), column (b). After the Detailed Energy Survey, the contractor revises the Initial Proposal and offers the final values in Schedule DO-1 (Final), column (b). The guaranteed annual cost savings must exceed the annual contractor payments (Schedule DO-1 (Final), column (c)) in each year of the delivery order performance period. For the first interval (generally 12 months) after Government acceptance of construction, the contractor is paid as if the savings guarantee is being met. The annual energy audit establishes actual savings. If actual savings fall short of the guarantee, the contractor will pay back the shortfall over the next interval by accepting lower payments.

Implementation Period. The period between the date of delivery order award to the date that all ECMs are operational and accepted by the Government. If additional ECMs are added to the delivery order by modification, the implementation period for such additional ECMs shall be from date of delivery order modification incorporating the additional ECMs to the date all additional ECMs are operational and accepted by the Government.

Implementation Period Expenses. Implementation expenses are the DIRECT costs (without contractor mark-ups) of all tasks required to install ECMs. Implementation period expenses shall not include any indirect costs, financing costs, profit nor any expense incurred during the performance period.

Implementation Period Mark-Ups. Implementation Period markups are the means by which the contractor recovers INDIRECT costs and obtains profit during the implementation period. They are established by contract Section C.2 Technology Categories. The implementation period mark-ups shall not include any direct costs, financing costs, nor any indirect costs incurred during the performance period. The IDIQ Contract Maximum Mark-ups listed in Schedule B-1 are maximum figures and are negotiable downward only for specific delivery order proposals. (Also see Multiple Technology Category Projects.)

Implementation Price. Implementation period mark-up (M in %), Implementation period expense (E in \$), and Implementation price (P in \$) are related by the expression $P = E \times (1 + M/100)$. Delivery order implementation prices are entered in Schedule DO-2 by ECM.

Indefinite Delivery/Indefinite Quantity (IDIQ) Contract. A contract for property or services that does not procure or specify a firm quantity of property or services (other than a minimum and possibly a maximum quantity) and that provides for the issuance of delivery orders for the delivery of the property and services during the specified ordering period of the contract.

Index Rate. The index rate is the interest rate for the financing period of a specific delivery order project, based on the contractor's proposed financial index. The Schedule B-2 added premium negotiated for a delivery order project is added to this figure.

Initial Energy Survey. A procedure which may include, but is not limited to, an evaluation of energy cost savings and energy unit savings potential, building conditions, energy consuming equipment, and hours of use or occupancy, for the purpose of developing initial technical and price proposals prior to selection of a contractor for performance of a delivery order project in accordance with the contract procedures.

Multiple Technology Category Projects. If an ECM project has more than one technology category, the costs will be broken down into technology categories according to Schedule B-1. The mark-up for each technology category will be applied to the categorical cost for that part of the project and summed to obtain the proposed contractor payment.

Nonrecurring Energy-Related Cost Savings. Nonrecurring energy-related cost savings or "one-time" cost savings are realized when the government has budgeted and allocated non-capital funds for a project to renovate, renew, or repair energy-consuming systems or modify them to comply with environmental regulations or other agency facility requirements and the Super ESPC delivery order makes the expenditure for energy-consuming system renovation, renewal, repair or modification unnecessary.

Outstanding Capital Investment. Remaining unamortized principal on total amount financed plus any prepayment charges for a specific delivery order project, as negotiated and specified for each time period identified in the Schedule DO-5, "Annual Cancellation Ceiling Schedule."

Performance Period. The period (typically in years) from the date a delivery order project is operational and accepted by the Government, to the end of the delivery order's contract term. The performance period may also be referred to herein as the "service period".

Performance Period Expenses. Performance period expenses are the DIRECT costs (without contractor mark-ups) of all tasks required to maintain energy savings performance after Government acceptance of installed ECMs. Performance period expenses shall not include any

indirect costs, financing costs, profit nor any expenses incurred during the implementation period.

Performance Period Mark-up. Performance period mark-up is the means by which the contractor recovers INDIRECT costs and obtains profit during the performance period. The types of performance period expenses that would normally be considered indirect costs include overhead, general and administrative expenses, other indirect cost elements associated with tasks required to manage and maintain energy savings performance after Government acceptance of installed ECMs. The performance period mark-up shall not include any direct costs, financing costs, nor any indirect costs incurred during the implementation period. The mark-up listed in Schedule B-2 is a maximum figure and is negotiable for specific delivery order proposals.

Performance Period Price. Performance period mark-ups (M in %), performance period expenses (E), and performance period prices (P in \$) are related by the expression $P = E \times (1 + M/100)$. Delivery order performance period prices are entered in Schedule DO-3 for each year of the performance period.

Pre-Performance Period Payments. Payments made to the contractor prior to the commencement of the performance period. These payments would typically be identified in year Zero of the Schedule DO-2 and on the Schedule DO-3 prior to application of financing.

Project Floor Space. Project floor space is the total square footage of a building in which ECMs are installed by a contractor, or of buildings where energy usage and sources are affected by installed ECMs. Project floor space for affected buildings shall be submitted in Schedule DO-4.

Project Interest Rate. The Contractor's proposed added premium, when added to the specified financing index rate proposed by the Contractor for a specific delivery order project will be the Project Interest Rate. (Also see Added Premium.)

Recurring Energy-Related Cost Savings. Recurring energy-related cost savings are ongoing or annually recurring reductions in energy-related expenses that are budgeted and allocated annually, i.e., lowered costs for ongoing maintenance, operations and repair. These must be "real" savings, i.e., there must be an associated reduction in money that the Government was currently spending or planning to spend. Operations, maintenance, and repair costs for tasks currently being performed by the government or by a contractor hired by the Government are energy-related cost savings if the ESPC contractor assumes the task, reduces the task, or eliminates the task. The Government will determine whether an ESPC contractor-proposed task assumption, reduction, or elimination will be considered recurring energy-related cost savings.

Technology Category. ECMs shall be categorized based on the type of system and equipment involved in the project. The technology categories are indicated in Schedule B-1. The miscellaneous category shall be used for applications where the ECMs are not identified by the other categories.

SAMPLE REPORTING REQUIREMENTS CHECKLIST FOR DELIVERY ORDERS

SCHEDULE OF DELIVERABLES FOR DELIVERY ORDERS					
Item	Description	Frequency	Due	Copies	Delivered to:
1	Certificate of Insurance	One time	15 days after award of delivery order	1	Agency Contracting Officer
2	Performance Bond	One time	30 days after award of delivery order	1	Agency Contracting Officer
3	Payment Bond	One time	30 days after award of delivery order	1	Agency Contracting Officer
4	Work Schedule	Monthly	10 days before work start	2	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (1 copy)
5	Work - Outside Normal Hours	Per occurrence	5 days before work start	3	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Contracting COR (2 copies)
6	Design & Construction Package	One time	agency specify due date based on final proposal and negotiations ____ days after DO award	5	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (2 copies)
7	ECM Installation Quality control Inspection Program	One time	With Item 6 above	5	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Contracting COR (2 copies)
8	Commissioning Plan	One time	With item 7 above	5	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (2 copies)
9	Safety & Health Plan	One time	with Item 6 above	3	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (2 copies)
10	Notification of Utility Interruption	Per occurrence	15 working days prior to outage	3	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (2 copies)
11	Operation Work Procedure	One time	With training class	6	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (1 master for reproduction and 4 copies)
12	Maintenance Work Procedure	One time	With training class	6	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (1 master for reproduction and 4 copies)
13	O&M Manuals	One time	With training class	6	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (1 master for reproduction and 4 copies)
14	Post-Installation M & V Report	One time	Upon ECM installation and commissioning	6	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (2 copies) DOE COR (1 copy)
15	As-built Drawings	Per ECM	90 days after Government's acceptance	3	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (2 copies)
16	Annual M&V Report on ECM Performance	Annually	15 days after Annual Energy Audit	5	<ul style="list-style-type: none"> Agency Contracting Officer (1 copy) Agency COR (2 copies) DOE COR (1 copy)

NEGOTIATED CONTRACT B SCHEDULES

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<u>SCHEDULE No.</u>	<u>TITLE</u>
B-1	IDIQ Contract Maximum Markups
B-2	IDIQ Contract Maximum Added Premiums

SCHEDULE B-1

IDIQ CONTRACT MAXIMUM MARK-UPS		
TECHNOLOGY CATEGORY		MAXIMUM MARK-UP %
C.2.1	Boiler Plant Improvements	
C.2.2	Chiller Plant Improvements	
C.2.3	Building Automation Systems(BAS)/Energy Management and Control Systems (EMCS)	
C.2.4	Heating, Ventilating, and Air Conditioning (not including boilers, chillers, and BAS/EMCS)	
C.2.5	Lighting Improvements	
C.2.6	Building Envelope Modifications	
C.2.7	Chilled Water/Hot Water and Steam Distribution Systems	
C.2.8	Electric Motors and Drivers	
C.2.9	Refrigeration	
C.2.10	Distributed Generation	
C.2.11	Renewable Energy Systems	
C.2.12	Energy/Utility Distribution Systems	
C.2.13	Water and Sewer Conservation Systems	
C.2.14	Electrical Peak Sharing/Load Shifting	
C.2.15	Energy Cost Reduction Through Rate Adjustments	
C.2.16	Energy Related Process Improvements	
C.2.17	Proposal Development Energy Surveys	
	Performance Period Services	

The markups indicated in this contract schedule are the negotiated MAXIMUM mark-ups which may be applied in price proposals for all delivery orders against the IDIQ contract during its ordering period. Markup amounts shall include all indirect cost elements and profit. The indirect elements of expense in the markups include such things as overhead, G&A expense, general program marketing and management, etc. They DO NOT include any direct expenses. The Contractor shall identify the elements of indirect expense included in the proposed markups for a specific delivery order project.

SCHEDULE B-2

IDIQ CONTRACT MAXIMUM ADDED PREMIUMS					
Financing Period*	Total Amount Financed				
	< \$500K	\$500K – \$1M	\$1M -- \$3M	\$3M – \$7M	> \$7M
0-3 years					
4-6 years					
7-10 years					
11-15 years					
16-25 years					

This schedule provides the negotiated MAXIMUM Added Premiums, as the number of basis points (basis point=1/100 percentage points), that may be added by the Contractor to an index (as identified by financial index, source and date in Schedule D0-3 of a delivery order project proposal), to arrive at the total Project Interest Rate for a specific delivery order project issued against this contract. The Added Premiums may not exceed the maximum values provided above for the corresponding financing period and total amount financed for specific delivery order projects. The actual total Project Interest Rate for a specific delivery order project will therefore be based on the index rate and the negotiated added premium for that project.

DELIVERY ORDER (DO) SCHEDULES

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<u>Schedule Number</u>	<u>Title</u>
DO-1 (Initial)	Proposed Guaranteed Annual Cost Savings and Annual Contractor Payments
DO-1 (Final)	Guaranteed Annual Cost Savings and Annual Contractor Payments
DO-2	Implementation Price by ECM
DO-3	Performance Period Cash Flow
DO-4	First Year Energy and Cost Savings by ECM, Technology Category, and Delivery Order
DO-5	Annual Cancellation Ceiling Schedule

Schedule DO-1 (Initial)

Proposed Guaranteed Annual Cost Savings and Annual Contractor Payments
If selected the Contractor shall complete the installation of all proposed ECMs not later than _____ months after delivery award.

Performance Period Year	Delivery Order No.:	Contractor Name:	Project Site:
	(a)	(b)	(c)
	Initial Estimated Annual Cost Savings \$	Proposed Guaranteed Annual Cost Savings \$	Annual Contractor Payments \$
ZERO			
ONE			
TWO			
THREE			
FOUR			
FIVE			
SIX			
SEVEN			
EIGHT			
NINE			
TEN			
ELEVEN			
TWELVE			
THIRTEEN			
FOURTEEN			
FIFTEEN			
SIXTEEN			
SEVENTEEN			
EIGHTEEN			
NINETEEN			
TWENTY			
TWENTY-ONE			
TWENTY-TWO			
TWENTY-THREE			
TWENTY-FOUR			
TWENTY-FIVE			
TOTALS	\$ —	\$ —	\$ —

- (1) The first year Initial Estimated Annual Cost Savings reflects technical proposal & engineering estimates as presented in DO-4.
- (2) The "Proposed Guaranteed Annual Cost Savings" is based on the site specific M&V plan.
- (3) The total of Annual Contractor Payments represents the deliver order price and should be supported by information submitted in and provided with Schedules DO-2 and DO-3.
- (4) If applicable, pre-performance period payments will be submitted for year Zero.
- (5) The Proposed Guaranteed Annual Cost Savings must exceed the Annual Contractor Payments (except year zero) for each year of the delivery performance period.
- (6) If applicable, submit escalation rates applied to Initial Estimated Annual Cost Savings in column (a) as follows:
 - a) Energy Rates _____% (specify % escalation for each energy type (electricity, natural gas, etc) if different)
 - b) Energy-related O & M Savings _____%

Schedule DO-1 (Final)
Guaranteed Annual Cost Savings and Annual Contractor Payments

If selected the Contractor shall complete the installation of all proposed ECMs not later than _____ months after delivery award.

Performance Period Year	Delivery Order No.:	Contractor Name:	Project Site:
	(a) DES Proposed Annual Cost Savings \$	(b) Guaranteed Annual Cost Savings \$	(c) Annual Contractor Payments \$
ZERO			
ONE			
TWO			
THREE			
FOUR			
FIVE			
SIX			
SEVEN			
EIGHT			
NINE			
TEN			
ELEVEN			
TWELVE			
THIRTEEN			
FOURTEEN			
FIFTEEN			
SIXTEEN			
SEVENTEEN			
EIGHTEEN			
NINETEEN			
TWENTY			
TWENTY-ONE			
TWENTY-TWO			
TWENTY-THREE			
TWENTY-FOUR			
TWENTY-FIVE			
TOTALS	\$ -	\$ -	\$ -

- (1) The first year (Year One) DES Proposed Annual Cost Savings reflects technical proposal & engineering estimates as presented in DO-4.
- (2) The Guaranteed Annual Cost Savings are based on the site specific M&V plan.
- (3) The total of Annual Contractor Payments represents the delivery order price and should be supported by information submitted in Schedules DO-2 and DO-3, and their required supporting documentation (See Section H.24.2.)
- (4) If applicable, pre-performance period expenses will be submitted for year Zero.
- (5) The Guaranteed Annual Cost Savings must exceed the Annual Contractor Payments (except year zero) for each year of the delivery order performance period.
- (6) Provide escalation rates applied to DES Proposed Annual Cost Savings in column (a) as follows:
 - a) Energy Rates ____% (specify % escalation for each energy type (electricity, natural gas, etc) if different)
 - b) Energy-related O & M Savings ____%

<p style="text-align: center;">SCHEDULE DO-2 IMPLEMENTATION PRICE BY ECM</p>	
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Project Site:	Delivery Order No.:	Contractor Name:
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Project Site:	Delivery Order No.:	Contractor Name:
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Project Site:	Delivery Order No.:	Contractor Name:
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[illegible]

Notes:

- 1) Total Implementation Expenses shall include only direct costs, and no performance period expenses.
- 2) Contractor shall identify direct costs for DES and proposal development costs as a separate line item, as applicable.
- 3) Contractor shall attach adequate supporting information detailing total implementation expenses (direct costs), in accordance with Section H.24.2 of the contract.
- 4) Contractor shall propose bonded amount representing the basis of establishing performance and payment bonds per Section H.17 of the contract, as required.
- 5) Attached supporting information shall be presented to identify portions of ECM or project expenses included in proposed bonded amount.
- 6) Proposed Bonded Amount is assumed to include mark up applied to implementation expenses above, unless otherwise specified by Contractor.
- 7) For the following ECMs, enter the *total installed capacity of new equipment* in the units specified (e.g. chillers-150); chillers & packaged units in tons, VFDs in hp, boilers & furnaces in input Btu/hr, BAS/EMCS in number of points, transformers in kVA, generators in kW. For lighting ECMs, specify baseline kW treated.

Schedule DO-3
Performance Period Cash Flow

Project Site:		Delivery Order No.		Contractor:								
Project Capitalization			Applicable Financial Index _____									
Total Implementation Price (DO-2 Total)			\$ -	Term (Years)		_____		Issue Date:				
Financing Procurement Price (\$)			\$ -	Index Rate		_____		Source:				
Less Pre-Performance Period Payments			\$ -	Added Premium		_____						
TOTAL AMOUNT FINANCED		\$ -	Project Interest Rate		_____		Effective Through:					
Term	0		1	2	3	4	5	6	7	8	9	10
Annual Cash Flow (Performance Period)												
Debt Service:												
Interest (\$)	\$ -	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Principal Repayment (\$)	\$ -	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
TOTAL DEBT SERVICE (a)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Performance Period Expenses		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
		\$ -										
SUB TOTAL Performance Period Expenses		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Performance Period Mark-Up (%)	%	%	%	%	%	%	%	%	%	%	%	%
Performance Period Mark-Up (\$)		\$ -										
TOTAL PERFORMANCE PERIOD EXPENSES (b)		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Amount Contractor Payments (a) + (b)		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Notes: 1) Performance Period Expenses shall include only direct costs, and no implementation period expenses.
2) Contractor shall attach a adequate supporting information detailing total performance period expenses (direct costs), in accordance with Section H.24.2 of the contract.
3) If applicable, contractor shall specify escalation rate applied to performance period expenses: _____%
4) If applicable, pre-performance period payments will be applied in year Zero to reduce principal repayment.

Performance Period Cash Flw (PAGE 2)

Contractor:

[illegible]

SCHEDULE DO-3
Performance Period Cash Flow (PAGE 3)

Project Site: _____

Delivery Order No.

Contractor:

	21	22	23	24	25	
Annual Cash Flow (Performance Period)						
Debt Service:						Totals
Interest (\$)						\$
Principal Repayment (\$)						\$
TOTAL DEBT SERVICE (a)						\$
Performance Period Expenses						
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
SUB TOTAL Performance Period Expenses	\$ (1)	\$ -	\$ -	\$ -	\$ -	\$ (1)
Performance Period Mark-Up (%)	\$	\$	\$	\$	\$	\$
Performance Period Mark-Up (\$)	%					
TOTAL PERFORMANCE PERIOD EXPENSES (b)	\$ (1)	\$ -	\$ -	\$ -	\$ -	\$ (1)
Total Annual Contractor Payments (a) + (b)						

<p align="center">SCHEDULE DO-4</p> <p align="center">First Year Energy and Cost Savings by ECM, Technology Category and Delivery Order</p>	
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Project Site::	Delivery Order No.	Contractor Name:	Project Square Footage (KSF)
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Project Site::	Delivery Order No.	Contractor Name:	Project Square Footage (KSF)
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Project Site::	Delivery Order No.	Contractor Name:	Project Square Footage (KSF)
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Project Site::	Delivery Order No.	Contractor Name:	Project Square Footage (KSF)
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[illegible]

TOTAL	
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Notes: 1) Project Square Footage (in 1000 SF) - Include only building square footage affected by installed ECMS in project.
2) For column (a) insert estimated energy baseline by ECM and total project in MBTU based on DES and Final Proposal data.
3) Energy conversion factors for MBTU: MBTU=10⁶ BTU; Electricity - 0.003413 MBTU/kWh; Natural Gas - 0.1 MBTU/therm ; #2 Oil -0.128 MBTU/gal.
4) Specify "Other" energy savings in (e)(1) & (e)(2) as applicable. Include energy type _____; energy units _____; and BTU conversion factor _____ BTU/ _____ (unit)

SCHEDULE DO-5 Annual Cancellation Ceiling Schedule			
Project Site:	Delivery Order No.:	Contractor Name:	
		Outstanding Capital Investment	Total Cancellation Ceiling
Installation Acceptance			
End of Year One			
End of Year Two			
End of Year Three			
End of Year Four			
End of Year Five			
End of Year Six			
End of Year Seven			
End of Year Eight			
End of Year Nine			
End of Year Ten			
End of Year Eleven			
End of Year Twelve			
End of Year Thirteen			
End of Year Fourteen			
End of Year Fifteen			
End of Year Sixteen			
End of Year Seventeen			
End of Year Eighteen			
End of Year Nineteen			
End of Year Twenty			
End of Year Twenty-one			
End of Year Twenty-two			
End of Year Twenty-three			
End of Year Twenty-four			
End of Year Twenty-five			
(1) Outstanding Capital Investment - A fixed subset of Total Cancellation Ceiling. Constitutes the remaining unamortized principal on total Amount Financed for each time period specified above plus any prepayment charges, as negotiated for the delivery order award. (2) Cancellation Ceilings for each time period specified above establish the maximum termination liability for that time period. Actual total termination costs will be negotiated. (3) The contractor may attach a monthly Financing Termination Liability Schedule which must correspond to the annual amounts submitted above in each year for Outstanding Capital Investment. (4) In the event of delivery order cancellation or termination for convenience, FAR 52.217-2 or 52.249.2 will apply. Changes to a delivery order based on mutual agreement of the parties rather than cancellation or termination may use the information in this schedule.			

ESPC Contract Risk/Responsibility Matrix

RESPONSIBILITY/DESCRIPTION	ESCO PROPOSED APPROACH	AGENCY ASSESSMENT
Financial:		
Interest rates: Neither the ESCO nor the agency has significant control over prevailing interest rates. During all phases of the project, interest rates will change with market conditions. Higher interest rates will increase project cost, financing/project term, or both. The timing of the Delivery Order signing may impact the available interest rate and project cost. Clarify when the interest rate is locked in, and if it is a fixed or variable rate.		
Energy prices: Neither the ESCO nor the agency has significant control over actual energy prices. For calculating savings, the value of the saved energy may either be constant, change at a fixed inflation rate, or float with market conditions. If the value changes with the market, falling energy prices place the ESCO at risk of failing to meet cost savings guarantees. If energy prices rise, there is a small risk to the agency that energy saving goals might not be met while the financial goals are. If the value of saved energy is fixed (either constant or escalated), the agency risks making payments in excess of actual energy cost savings.		
Construction costs: The ESCO is responsible for determining construction costs and defining a budget. In a fixed-price design/build contract, the agency assumes little responsibility for cost overruns. However, if construction estimates are significantly greater than originally assumed, the ESCO may find that the project or measure is no longer viable and drop it. In any design/build contract, the agency loses some design control. Clarify design standards and the design approval process (including changes) and how costs will be reviewed.		

RESPONSIBILITY/DESCRIPTION	ESCO PROPOSED APPROACH	AGENCY ASSESSMENT
<p><u>M & V costs:</u> The agency assumes the financial responsibility for M & V costs directly or through the ESCO. If the agency wishes to reduce M & V cost, it may do so by accepting less rigorous M & V activities with more uncertainty in the savings estimates. Clarify what performance is being guaranteed (equipment performance, operational factors, energy cost savings) and that the M & V plan is detailed enough to satisfactorily verify it.</p>		
<p><u>Delays:</u> Both the ESCO and the agency can cause delays. Failure to implement a viable project in a timely manner costs the agency in the form of lost savings, and can add cost to the project. Clarify schedule and how delays will be handled.</p>		
<p><u>Major changes in facility:</u> The agency (or Congress) controls major changes in facility use, including closure. Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.</p>		
<p><u>Operational:</u></p>		
<p><u>Operating hours:</u> The Agency generally has control over the operating hours. Increases and decreases in operating hours can show up as increases or decreases in "savings" depending on the M & V method (e.g. operating hours times, improved efficiency of equipment vs. whole building, utility analysis). Clarify if operating hours are to be measured or stipulated and what the impact will be if they change. If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>		

RESPONSIBILITY/DESCRIPTION	ESCO PROPOSED APPROACH	AGENCY ASSESSMENT
<p><u>Load:</u> Equipment loads can change over time. The agency generally has control over hours of operation, conditioned floor area, intensity of use (e.g. changes in occupancy or level of automation). Changes in load can show up as increases or decreases in "savings" depending on the M & V method. Clarify if equipment loads are to be measured or stipulated and what the impact will be if they change. If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>		
<p><u>Weather:</u> A number of energy efficiency measures are affected by weather. Neither the ESCO nor the agency has control over the weather. Changes in weather can increase or decrease "savings" depending on the M & V method (e.g. equipment run hours times efficiency improvement vs. whole building utility analysis), If weather is "normalized" actual savings could be less than payments for a given year, but will "average out" over the long run. Weather corrections to the baseline or ongoing performance should be clearly specified and understood.</p>		
<p><u>User participation:</u> Many energy conservation measures require user participation to generate savings (e.g. control settings). The savings can be variable and the ESCO may be unwilling to invest in these measures. Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk. If performance is stipulated, document and review assumptions carefully and consider M & V to confirm the capacity to save (e.g. confirm that the controls are functional).</p>		
<p><u>Performance:</u></p>		

RESPONSIBILITY/DESCRIPTION	ESCO PROPOSED APPROACH	AGENCY ASSESSMENT
<p>Equipment performance: Generally the ESCO has control over the selection of equipment and is responsible for its proper installation and performance. Generally the ESCO has responsibility to demonstrate that the new improvements meet expected performance levels including standards of service and efficiency. Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.</p>		
<p>Operations: Responsibility for operations is negotiable, and it can impact performance. Clarify how proper operation will be assured. Clarify responsibility for operations and implication of equipment control.</p>		
<p>Maintenance & Repair Responsibility for maintenance and repair is negotiable, however it is often tied to performance. Clarify how long-term maintenance and repair will be assured, especially if the party responsible for long-term performance is not responsible for maintenance. Clarify who is responsible for ECM overhaul, component or equipment repair required to maintain operational performance throughout the contract term.</p>		
<p>Equipment Replacement. Responsibility for replacement of contractor-installed equipment is negotiable, however it is often tied to ECM performance. Clarify who is responsible for replacement of failed components or equipment throughout the term of the contract. Specifically address potential impacts on performance due to equipment failure. Life of equipment is critical to ECM performance during the contract term. Specify equipment life expected for all installed equipment and specify warranties proposed for the installed ECMs.</p>		

SUBCONTRACTING PLAN